MT LEGISLATIVE HISTORY

Chapter 253 1974

Bill H 600 S _____ Original bill & hist. ___C

H. Committee on Natural Resources		S. Committee on Executive Reorganization	
Hearing Date(s) Jan 15	✓C	Hearing Date(s) Feb 20	✓C
Jan 24	✓C	March	✓C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 24	✓C	March	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Saturday, January 19, 1974

The Natural Resources Committee met at 10:32 a.m. with Chairman Shelden presiding and all members but one present. Rep. Shelden opened the meeting to a hearing on HB 600 with instructions that each side would be limited to thirty minutes.

HB 600

Rep. Fasbender, the bill's sponsor, was the first speaker. He stated there were a number of amendments to be offered to the committee for consideration (Ex. 1). Each member has a copy of these and also a copy of a booklet explaining this bill which is a recodification of laws of the department of natural resources (Ex. 2).

Gary Wicks, director of the natural resources department, was the next speaker. He explained that this bill was held over as it was introduced late in the last session and the members of the committee did not feel they had sufficient time to analyze it. Mr. Wicks said 99% of the bill deals with recodification--name changes--so as to comply with the law. Mr. Wicks read a resolution in which all seven of the members on the natural resources board endorsed the bill with its proposed amendments. This is exhibit 3.

Bob Helding, St. Regis Paper Co., was the first opponent speaker. He stated he had spent the better part of a month trying to come to some conclusion; and now with extensive amendments, which he had seen for the first time the day before, he would need a little more time to study. He said what bothered him was the vast extent of authority that the bill gives one department.

Everett Snortland, Montana Farm Bureau, was the next speaker and stated he also didn't have time to study the amendments. He said since it covers everything that agriculture works in he was very concerned. He felt this was an example of a department doing the legislating which should be the job of the legislators.

Rep. Fasbender stated that if any of the committee or opponents would take the time between now and Tuesday, the proponents would see that there would be someone to sit down with them and answer any questions concerning the bill and suggested amendments they might wish to ask.

Questions were asked by the committee. It was the concern of some members that the board would lose its power of concurrence in important policy recommendations. Ted Doney, of the natural resources department, answered many of the questions.

It was the feeling of some of the members of the committee that considering the bill Tuesday would not give sufficient time to analyze the bill; and since the Thursday meeting is fairly heavily scheduled, Chairman Shelden asked if the committee could come a half hour early to consider HB 600. It was so agreed.

Signing in opposition to HB 600 were:

Gary Valdsen, Martinsdale
Diana Gravely, Broadwater Co. Farm Bureau
Dave Smith, Montana Wool Growers
Josephine S. Cope, Canyon Ferry Route

Ex. 1

HOUSE BILL NO. 600

PROPOSED AMENDMENTS

Amend on page 1, line 15, by deleting "82,-3001" and inserting in lieu thereof "82-3001"

Further amend on page 1, line 16, by deleting "82A-1511," and inserting in lieu thereof "82A-1506, 82A-1507.1, 82A-1508 THROUGH 82A-1512,"

Further amend on page 1, line 19, following "89-117" by inserting "THROUGH 89-120, 89-124"

Further amend on page 1, line 20, following "89-312," by inserting "89-312.1,"

Further amend on page 1, line 22, by deleting "89-702, 89-702.1, 89-801,"

Further amend on page 1, line 23, by deleting "89-801.2,"

Further amend on page 1, line 23, by deleting "89-809, 89-813,"

Further amend on page 1, line 23, by deleting "89-847"

Further amend on page 1, line 24, by deleting "THROUGH 89-849, 89-851,"

Further amend on page 1, line 25, by deleting "89-1001,"

Further amend on page 2, line 1, by deleting "89-2913" and inserting in lieu thereof "89-2914"

Further amend on page 2, line 1, by deleting "89-2924" and inserting in lieu thereof "89-2918"

Further amend on page 2, line 1, following "89-2927," by inserting "89-2928.1,"

Further amend on page 2, line 2, following the first word "THROUGH" by inserting "89-2934, 89-2934.1,"

Further amend on page 2, line 2, following "89-3403" by inserting ",89-3405"

Further amend on page 102, lines 24 and 25, and on page 103,lines 1 and 2, by deleting the material therein in its entirety beginning with the interlined word "~~The~~" on line 24, page 102 and continuing through the word and punctuation "~~information~~ on page 103, line 2.

Further amend on page 103, line 21, by deleting the words "one-fourth" and inserting in lieu thereof (without underlining) the words "three-eights"

Further amend on page 103, line 22, by deleting "¼¢" and inserting in lieu thereof (without underlining) "3/8¢"

Further amend on page 103, line 25, by deleting the words "one-half" and inserting in lieu thereof (without underlining) the words "three-fourths"

Further amend on page 104, line 1, by deleting "½¢" and inserting in lieu thereof (without underlining) "3/4¢"

Further amend on page 104, line 5, by deleting "one (1) mill" and inserting in lieu thereof (without underlining) "two and one-half (2½) mills"

Further amend on page 104, line 6, following the word "gas" by inserting (without underlining) the following:

"where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet"

Further amend on page 106, line 2, following the word "well" by inserting (without underlining) the following: "or stratigraphic test well or core hole"

Further amend on page 106, line 3, by deleting the word "commission" and inserting in lieu thereof "board"

Further amend on page 135, line 10, following the word "shall" by inserting (without underlining) the following: ", if there are no incorporated municipalities within the boundaries of said district,"

Further amend on page 135, between lines 12 and 13, by inserting the following:

"(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

(3) Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein."

Further amend on page 135, line 13, by deleting "(2)" and inserting in lieu thereof "(4)"

Further amend on page 135, line 18, by deleting the word "A" and inserting in lieu thereof (without underlining) the words "An elected"

Further amend on page 135, line 20, following the word "of" by inserting (without underlining) the words "an elected"

Further amend on page 136, line 5, by deleting "(3)" and inserting in lieu thereof "(5)"

Further amend on page 136, line 21, by deleting "(4)" and inserting in lieu thereof "(6)"

Further amend on page 137, line 6, by deleting "(5)" and inserting in lieu thereof "(7)"

Further amend on page 166, between lines 8 and 9, by inserting the following: "(3) Portable sawmill regulation (title 28, chapter 8);"

Further amend on page 166, line 9, by deleting "(3)" and inserting in lieu thereof "(4)"

Further amend on page 166, line 10, by deleting "(4)" and inserting in lieu thereof "(5)"

Further amend on page 166, line 12, by deleting "(5)" and inserting in lieu thereof "(6)"

Further amend on page 166,between lines 12 and 13, by inserting the following: "(7)" Utility sites (title 70, chapter 8);"

Further amend on page 166, line 13, by deleting "(6)" and inserting in lieu thereof "(8)"

Further amend on page 166, line 15, by deleting "(7)" and inserting in lieu thereof "(9)"

Further amend on page 166, line 16 and 17, by deleting the material therein in its entirety

Further amend on page 166, line 18, by deleting "(9)" and inserting in lieu thereof "(10)"

Further amend on page 166, line 19, by deleting "(10)" and inserting in lieu thereof "(11)"

Further amend on page 166, line 20, by deleting "(11)" and inserting in lieu thereof "(12)"

Further amend on page 166, line 21, by deleting "(12)" and inserting in lieu thereof "(13)"

Further amend on page 166, line 22, by deleting "(13)" and inserting in lieu thereof "(14)"

Further amend on page 166, line 24, by deleting "(14)" and inserting in lieu thereof "(15)"

Further amend on page 166, line 25, by deleting "(15)" and inserting in lieu thereof "(16)"

Further amend on page 167, line 1, by deleting "(16)" and inserting in lieu thereof "(17)"

Further amend on page 167, line 2, by deleting "(17)" and inserting in lieu thereof "(18)"

Further amend on page 167, line 3, by deleting "(18)" and inserting in lieu thereof "(19)"

Further amend on page 167, lines 4 through 25 and on page 168, lines 1 through 13, by deleting the material contained therein in its entirety

Further amend on page 169, line 19, by deleting "five (5)" and inserting in lieu thereof (without underlining) "seven (7)"

Further amend on page 169, line 24, following the last "." by inserting (without underlining), and interlining, the following: "~~The other two (2) members are members at large.~~"

Further amend on page 175, lines 18 through 25, and on page 176, lines 1 through 9, by deleting the material contained therein in its entirety and inserting in lieu thereof the following:

"89-103.2. Powers and duties of ~~director~~ department subject to approval of board. ~~The director shall be the chief administrative office (officer) of the state water conservation board and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that the director shall~~ The department may not acquire by appropriation or otherwise ~~any~~ a water right or interest therein and ~~shall~~ may not acquire ~~any~~ real property or an interest therein (except rights of access for the purpose of construction, operation, or maintenance of works) or mortgage or otherwise create a lien on the same or dispose of in any manner ~~any~~ water rights or real property or interests therein without ~~specific authorization from and~~ prior approval of ~~said~~ the board. The ~~director shall~~ department may not construct or cause to be constructed or contract for the construction of ~~any~~ works or projects without ~~specific authorization from and~~ prior approval of ~~said~~ the board. The department may not loan funds to a person or water user association for the purpose of constructing or maintaining works without prior approval of the board."

Further amend on page 176, line 14, by inserting after "board" the following: "under section 89-103.2"

Further amend on page 178, line 10, by deleting "~~board~~ department" and inserting in lieu thereof (without underlining) "department"

Further amend on page 178, after line 25, by inserting the following:

"(2) However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the department estimates of the cost of the improvements by more than five per cent (5%), the department shall obtain approval from the ~~works~~ water user association before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval."

Further amend on page 179, line 1, by deleting "(2)" and inserting in lieu thereof "(3)"

Further amend on page 179, line 18, by deleting "(3)" and inserting in lieu thereof "(4)"

Further amend on page 188, lines 23 through 25, page 189, lines 1 through 25, page 190, lines 1 through 25, and on page 191, lines 1 and 2, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-115. (349.12) Water funds--rates--sale of water--appeals to board--lease and sale of water rights and property. (1) ~~The board of natural resources and conservation is hereby authorized and empowered, subject to the provisions of~~ Subject to this act and section 89-103.2, ~~to~~ the department may fix and establish the prices, rates and charges at which ~~any and all~~ the resources and facilities made available under ~~the provisions of~~ this act ~~shall~~ may be sold and disposed of; ~~to~~ enter into ~~any and all~~ contracts and agreements, and ~~to do any and all~~ those things which in its judgment are necessary, convenient or expedient for the accomplishment of ~~any and all~~ the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it ~~shall prescribe~~ prescribes; ~~and it is and shall be the duty of the board to~~ the department shall enter into ~~such~~ the contracts and fix and establish ~~such~~ the prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of ~~any and all of~~ the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable; ~~provided, that nothing contained in~~ this act ~~shall~~ does not authorize any change, alteration or revision of ~~any such~~ those rates, prices or charges as established by any contract entered into under ~~authority of~~ this act except as provided by ~~any such~~ the contract.

(2) ~~Any~~ An incorporated water users' association that is sustaining and responsibl for the operations of ~~its~~ a works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

(3) ~~Every~~ A contract made by the ~~board~~ department for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of ~~any~~ a failure or default in the payment of ~~any~~ moneys specified in ~~such~~ the contract to be paid to the ~~board~~ department, the ~~board~~ department may, upon ~~such~~ notice as ~~shall be~~ is prescribed in ~~such~~ the contract, terminate ~~such~~ the contract and all obligations thereunder. The act of the ~~board~~ department in ceasing on ~~any such~~ default to furnish or deliver water, use of water, water storage or other service under ~~such~~ the contract ~~shall~~ does not deprive the ~~board~~ department of, or limit any remedy provided by ~~such~~ the contract or by law for the recovery of ~~any and all~~ moneys due or which may become due under ~~such~~ the contract.

(4) (a) A person aggrieved by a decision of the department to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within ten (10) days after receiving notice of termination of the contract from the department. The termination of the contract shall be stayed if an appeal is taken.

(b) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract, or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within thirty (30) days after the final decision of the department regarding the dispute.

(5) ~~The board is empowered to~~ Subject to the approval of the board under section 89-103.2, the department may sell, transfer to water user associations, abandon or otherwise dispose of any rights of way, easements or property when it ~~shall determine~~ determines that ~~the same is~~ they are no longer needed for the purposes of this act, or ~~to~~ lease or rent the same or ~~to~~ otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the ~~board~~ department as to the market value of rights of way, easements or property to be sold, transferred, abandoned or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under ~~the provisions of~~ this act, shall be deposited to the state general fund.

Further amend on page 196, lines 17 through 25, page 197, lines 1 through 25, page 198, lines 1 through 25, and page 199, lines 1 through 23, by deleting all of the material contained therein in its entirety

Further amend on page 206, lines 24 and 25, and on page 207, lines 1 through 12, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-310. Definitions. ~~As used in this act unless the context clearly indicates otherwise~~ Unless the context requires otherwise, in this chapter:

(1) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of ~~any or all~~ atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(3) "Department" means the department of natural resources and conservation, as provided for in ~~Title~~ title 82A, chapter 15.

(4) "Board" means the board of natural resources and conservation provided for in section 82A-1509. "

Further amend on page 207, lines 13 through 25 and on page 208, lines 1 through 4, by deleting all of the material contained therein in its entirety, and inserting in lieu thereof the following: "Section 145. Section 89-312.1, R.C.M. 1947, is amended to read as follows:

"89-312.1. Standards for research in weather modification control. The ~~department~~ board may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property.""

Further amend on page 208, lines 7 through 20, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-314. ~~Board~~ Department to review applications--exemptions. The ~~board~~ department shall review all applications for weather modification activities and the board may provide by rule for exempting from the license and permit requirements of this act:

(1) research and development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Further amend on page 209, lines 3 through 22, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-318. Issuance of permits--requirements for permit--hearing. (1) The permits shall be issued in accordance with procedures and subject to conditions the board ~~of-natural-resources-and-conservation~~ may by rule establish to effectuate ~~the-provisions-of~~ this ~~act~~ chapter, only:

(a) if the applicant is licensed pursuant to this ~~act~~ chapter;

(b) if sufficient notice of intention is published and proof of publication is filed as required in section 89-322 ~~of-this-act~~;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 89-323 ~~of this act~~;

(d) if the fee for the permit is paid as required in section 89-324 ~~of this act~~;

(e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good;

(2) ~~A~~ The department shall hold a public hearing ~~may be held~~ in the area to be affected by the issuance of the permit, if the ~~department~~ board determines that ~~such~~ a hearing is necessary. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing."

Further amend on page 216, lines 11 through 25, page 217, lines 1 through 25, page 218, lines 1 through 25, page 219, lines 1 through 25, page 220, lines 1 through 25, and on page 221, lines 1 through 12, by deleting all of the material contained therein in its entirety

Further amend on page 222, lines 11 through 25, page 223, lines 1 through 25, page 224, lines 1 through 25, page 225, lines 1 through 25, page 226, lines 1 through 25, and page 227, lines 1 through 11, by deleting all of the material contained therein in its entirety

Further amend on page 232, line 25, page 233, lines 1 through 25, page 234, lines 1 through 25, and page 235, lines 1 through 8, by deleting all of the material contained therein in its entirety

Further amend on page 240, lines 2 through 25, page 241, lines 1 through 25, and on page 242, lines 1 through 8, by deleting all of the material contained therein in its entirety, and inserting in lieu thereof the following:

"89-2911. Definitions. Unless the context requires otherwise, in this chapter:

(a) "Ground water" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The ~~administrator~~ department, after notice and hearing, ~~is authorized to~~ may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use"means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(f) ~~"Administrator"~~ "Department" means the department of natural resources and conservation provided for in ~~Title~~ title 82A, chapter 15.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to inclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Further amend on page 242, lines 9 through 25, page 243, lines 1 through 25, page 244, lines 1 through 25, page 245, lines 1 through 25, page 246, lines 1 through 25, and page 247, lines 1 through 3, by deleting all of the material contained therein in its entirety

Further amend on page 249, lines 9 through 25, page 250, lines 1 through 25, and on page 251, lines 1 through 8 by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-2915. Limiting withdrawals--hearing and order. (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the ~~administrator~~ department has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the ~~administrator~~ department that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The ~~administrator shall have the authority to~~ department may enforce the order; ~~to~~ require persons to cease such excessive withdrawals in reverse order of their priority of rights; and ~~to~~ bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the ~~administrator~~ department in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board ~~shall have authority~~ may after notice and hearing as heretofore provided in this section, ~~to~~ modify or revoke its order upon a

showing by any interested party and a finding by the board that conditions have materially changed since the prior order. While a matter is pending before the board, the ~~administrator shall have discretion and authority to~~ department may restrict further development of the subarea."

Further amend on page 253, lines 1 through 24 by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-2917. Scope of administrative hearing. (1) In ~~any~~ a hearing for the ascertainment and finding of priorities to the use of ground water, the ~~administrator~~ department in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, ~~shall be~~ is entitled in ~~such~~ the particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of ~~such~~ existing rights to ground water. It may also determine the level below which the ground water ~~shall~~ may not be drawn by appropriators. The ~~administrator~~ department shall act in administering and enforcing the ~~provisions of the~~ order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the ~~administrator~~ department shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915."

Further amend on page 254, lines 2 through 25, on page 255, lines 1 through 6, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-2918. Permit required to appropriate in controlled area. A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the ~~administrator~~ department in accordance with the Montana Water Use Act. The ~~administrator shall~~ department may not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments)."

Further amend on page 255, lines 7 through 25 and on page 256, lines 1 through 21, by deleting all of the material contained therein in its entirety

Further amend on page 258, between lines 20 and 21, by inserting the following:

"Section 192.1. Section 89-2928.1, R.C.M. 1947, is amended to read as follows:

"89-2928.1. Well logs. Within sixty (60) days after any well is completed, the driller shall file with the ~~administrator~~ department a well log report on a form provided by the ~~administrator~~ department at its offices and at the offices of the county clerks and recorders. The ~~administrator~~ department may return the report for refiling if it is incomplete or incorrect. The ~~administrator~~ department shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.""

Further amend on page 261, lines 1 through 10, by deleting all of the material contained therein in its entirety after the second word "Section" and inserting in lieu thereof the following: "89-2934.1, R.C.M. 1947, is amended to read as follows:

"89-2934.1. Hearings before board--Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the ~~administrator~~ department under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act [82-4201 to 82-4225] governs administrative proceedings under this chapter.""

Further amend on page 264, lines 6 through 18, by deleting all of the material contained therein in its entirety

Further amend on page 265, line 19, by deleting "conservation" and "commission,"

Further amend on page 266, line 22, by deleting "conservation"

Further amend on page 266, line 23, by deleting "commission,"

Further amend on page 274, lines 15 through 25, page 275, lines 1 through 25, page 276, lines 1 through 25, page 277, lines 1 through 9, by deleting all of the material contained therein in its entirety, and inserting in lieu thereof the following

"89-3503. Definitions. As used in this ~~act~~ chapter, unless the context otherwise requires:

(1) "A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one per cent (1%) chance of occurring in any given year;

(2) "Artificial obstruction" ~~shall mean~~ means any obstruction which is not a natural obstruction;

(3) "Channel" ~~shall mean~~ means the geographical area within either the natural or artificial banks of a watercourse or drainway;

(4) "Board" ~~shall mean the Montana water resources board~~ means the board of natural resources and conservation provided for in section 82A-1509;

(5) "Department" means the department of natural resources and conservation provided for in ~~Title~~ title 82A, chapter 15;

(6) "Designated floodway" ~~shall mean~~ means a floodway whose limits have been designated and established by order of the board~~,~~;

(7) "Drainway" ~~shall mean~~ means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" ~~shall mean~~ means the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" ~~shall mean~~ means the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodway-encroachment lines" ~~shall mean~~ means the lines limiting a designated floodway;

(11) "Floodplain" ~~shall mean~~ means the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;

(12) "Establish" ~~shall mean~~ means construct, place, insert, or excavate;

(13) "Natural obstruction" ~~shall mean~~ means any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;

(14) "Obstruction" ~~shall mean~~ means any dam, wall, riprap, embankment, levee, dike pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by ~~such~~ the water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(15) "Owner" ~~shall mean~~ means any person who has dominion over, control of, or title to an obstruction;

(16) "Political subdivision" ~~shall mean~~ means any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(17) "Watercourse" ~~shall mean~~ means any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."

Further amend on page 277, line 24, by deleting "fifty-year" and inserting in lieu thereof (without underlining) "one hundred (100) year"

Further amend on page 279, line 11, by deleting "fifty-year" and inserting in lieu thereof (without underlining) "one hundred (100) year"

Further amend on page 279, lines 16 through 23, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-3505. Artificial obstructions and nonconforming uses as nuisances. ~~Any~~ An artificial obstruction or nonconforming use in ~~any~~ a designated floodway enforced under section ~~89-3504, subsections (3) or (4)~~ 89-3504(3) and not exempt under section ~~6 [89-3506] of this act~~ 89-3506 is ~~hereby declared to be~~ a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board."

Further amend on page 280, lines 1 through 25, and page 281, lines 1 through 23, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-3506. Establishment of artificial obstructions or nonconforming uses unlawful--permitted open space uses--prohibited nonconforming uses. (1) It ~~shall be~~ is unlawful for a person to establish ~~any~~ an artificial obstruction or nonconforming use within a designated floodway, or ~~(2)~~ for ~~any~~ an owner to permit ~~any~~ an artificial obstruction to remain within a designated floodway without a permit from the board. This act ~~shall~~ does not affect any existing artificial obstruction or nonconforming use established in the floodway ~~prior to the effective date of this act and~~ before the land-use regulations adopted by the political subdivision are effective or before the board has enforced a designated floodway under section ~~89-3504, subsections (3) or (4)~~ 89-3504(3); ~~provided, that no~~ however, a person ~~shall~~ may not make nor ~~shall any~~ may an owner allow alterations of ~~any~~ an artificial obstruction within a designated floodway whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction ~~shall~~ is ~~not be construed to be~~ an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment: (a) agricultural uses; (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips; (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails; (d) forestry, including processing of forest products with portable equipment; (e) residential uses such as lawns, gardens, parking areas and play areas; (f) excavations subject to the issuance of a permit under section ~~89-3507~~ 89-3507.

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) ~~Any~~ a building for living purposes or place of assembly or permanent use by human beings; (b) ~~any~~ a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; (c) the construction or permanent storage of ~~any~~ an object subject to flotation or movement during flood level periods."

Further amend on page 283, lines 17 through 25, and on page 284, lines 1 through 12, by deleting all of the material contained therein in its entirety and inserting in lieu thereof the following:

"89-3508. Powers and duties of ~~board~~ department relative to obstructions. ~~The powers and duties of the board relative to obstructions in a board floodway shall include the following:~~

(1) Where an obstruction to a floodway established under section ~~89-3504, subsections (2) or (4)~~ 89-3504(2) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the ~~board~~ department may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the ~~board~~ department; and

(2) Where, after investigation, notice, and hearing, an order has been issued by the board to the owner of an obstruction not exempt under ~~the provisions of~~ section ~~6 [89-3506 of this act~~ 89-3506 for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the ~~board~~ department may make or cause ~~such~~ the removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Further amend on page 288, line 23, by inserting (without underlining) after the word "owners" the following: ", mortgagees and lien holders of record"

Further amend on page 288, line 23, by inserting (without underlining) after the word "and" the following: "any other"

Further amend on page 288, line 24, by inserting (without underlining) after the word "property" the following: "of record"

Further amend on page 292, line 17, by inserting after "82A-1506," the following: "82A-1507.1,"

Further amend on page 292, line 17, by inserting after "82A-1511," the following: "82A-1512,"

Further amend on page 292, line 20, by inserting after "89-827," the following: "and"

Further amend on page 292, line 20, by deleting the following: ", 89-2920 through 89-2923"

Ex. 2

EXPLANATION OF RECODIFICATION OF LAWS OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (House Bill 600)

The recodification of the laws governing the Department of Natural Resources and Conservation, like the recodification of the laws of the other departments, is necessitated by the reorganization of state government brought about by the Executive Reorganization Act of 1971. Briefly stated, the Executive Reorganization Act of 1971:

(1) Created the new Department of Natural Resources and Conservation with three statutory divisions, the Division of Water Resources, the Division of Forestry, and the Division of Conservation Districts (the Department also has three other divisions which have been created administratively);

(2) Abolished the Montana Grass Conservation Commission and transferred its functions to the Department;

(3) Transferred the functions of the Montana Bureau of Mines and Geology pertaining to strip coal mining regulation under the 1967 coal-mined reclamation act to the Department;

(4) Abolished the Montana Water Resources Board and transferred its functions to the Department's Division of Water Resources;

(5) Abolished the Montana State Board of Forestry and the position of State Forester and transferred their functions to the Department's Division of Forestry;

(6) Transferred the functions of the Conservation Commission to the Department's Division of Conservation Districts, retaining the Commission to act in an advisory capacity to the Department (the Commission has since been abolished by subsequent legislation in 1973);

(7) Renamed the Oil and Gas Conservation Commission the Board of Oil and Gas Conservation, and allocated the Board to the Department for administrative purposes only;

(8) Created a Board of Natural Resources and Conservation consisting of five members (the Board has since been increased to seven members by subsequent legislation in 1973);

(9) Created the position of Director of Natural Resources and Conservation, and provided that the Director is to carry out his duties as Department head "subject to the concurrence of the Board of Natural Resources and Conservation." (A further discussion of this language--"subject to the concurrence"--is set out below in this explanation.)

(10) Abolished the Council on Natural Resources and Development, the Outdoor Recreation Advisory and Planning Committee, and the Weather Modification Advisory Committee.

The Executive Reorganization Act in abolishing the above agencies and transferring their functions did not expressly amend any statutes to accomplish its purpose; rather, the Act merely stated that a particular agency was abolished and its functions were transferred to a new agency. If the Executive Reorganization Act had been drafted in the usual manner of making express amendments to all affected statutes, it would have been thousands of pages in length and impossible to comprehend or amend during the legislative process. Consequently, there are now scores of sections in the Revised Codes which contain references to old agencies which no longer exist. For clarity and ease of reading, these statutes should be expressly amended. Such is the primary purpose of this recodification.

Although the primary purpose of this recodification is to change agency names to reflect reorganization, it was felt that this would also be a good opportunity to amend the same statutes so they are more understandable and utilize modern legislative drafting style. For this reason many changes are also proposed which delete superfluous or obsolete language, change the language to present tense, improve grammar, number subsections, etc. <u>These style changes do not change the substance of the law</u>.

Laws governing the Department of Natural Resources and Conservation are found throughout the Revised Codes of Montana, primarily in Titles 28, 46, 60, 70, 76, 81, and 89. In some cases, only name changes were made in these laws to reflect changes made by the Executive Reorganization Act. In most sections, however, proposed changes are made in drafting style, and much archaic and obsolete language is removed.

Many sections were found to be superseded by subsequently enacted laws, duplicated by other sections, or obsolete and no longer needed and are, therefore, proposed to be repealed.

Also included in this proposed recodification is a deletion of various provisions which are now covered by the Montana Administrative Procedure Act (APA), which was enacted in 1971. That Act sets uniform procedures for adopting administrative rules, holding hearings in contested cases, and judicial review of decisions of administrative agencies. By deleting provisions in sections that are now covered by the Administrative Procedure Act, a uniform approach can be established by all administrative bodies, and a great deal of unneeded verbiage can be removed from the laws of Montana. This will add clarity and uniformity to all administrative actions instead of having hundreds of different and conflicting provisions scattered throughout the Revised Codes.

The Executive Reorganization Act of 1971, as amended by the Legislature in the 1971 session, is vague on exactly who performs what functions in the Department of Natural Resources and Conservation. All of the functions of the various boards and agencies abolished under Executive Reorganization were transferred to the new Department of Natural Resources and Conservation or its divisions, with the Director of Natural Resources and Conservation as Department head. However, the Executive Reorganization Act also provides that the functions of the Director as the head of the Department are "subject to the concurrence of the Board of Natural Resources and Conservation." (See Section 82A-1510 in the Executive Reorganization Act.) Nowhere else in the Act does it say what the Board is supposed to do.

This language is at best unclear, because it does not state what "concurrence" means, whether or not the functions of the Department must be concurred in in advance, or even what specific functions of the Department need to be concurred in by the Board. Consequently, the legal interpretation has been reached that the Board must at least formally concur in those actions of the Department which grant or deny rights or privileges to members of the public. If the Board does not do so, those actions may be invalid and subject to legal challenge years later.

This vague language has resulted in the Board concurring in routine actions of the Department which have already been carried out, such as the issuance of permits to cut firewood, the issuance of contracts for the sale of water resource projects, and various other actions granting or denying rights or privileges to members of the public. Many of these routine matters occur on a daily basis, and it is therefore impossible for the Board to concur in these matters in advance. Much of the Board's time at each of its meetings is taken up by concurring in these routine matters. Administration of the Department under this vague language becomes unwieldy and is always open to potential attack.

In order to rectify this situation, it is recommended in this recodification that the natural resource statutes be expressly amended to clearly delineate and separate the functions of the Board from those of the Department. The best way to accomplish this is by naming either the Board or the Department as the performer of each particular function set out in a particular statute.

The decision had to be made in this recodification as to what functions the Board should perform, and what functions the Department should perform. It was concluded, after reviewing the legislative intent of the amendments made by the Legislature to the Reorganization Act in 1971, that the Board should perform quasi-legislative (rule-making) and quasi-judicial (making decisions in contested cases) functions, and also those other functions of the Department which involve establishing policy. Consequently, general guidelines have been established for the purpose of making the agency name changes in this recodification. The guidelines provide that the Board would perform the following functions:

(1) Classify state forest lands for fire protection purposes;

(2) Adopt rules for providing fire protection by a recognized fire protection agency;

(3) Approve the creation of organized forest fire protection districts and hold hearings thereon;

(4) Adopt rules and standards for fire protection by owners of forest land;

(5) Designate the boundaries of fire protection districts;

(6) Approve the state's fire protection plan and establish the state's portion of the cost of that plan;

(7) Approve the creation of insect infestation zones;

(8) Adopt rules for the Department to supervise the reduction or management of fire hazards;

(9) Hold hearings and remove the directors of state grazing districts;

(10) Hold hearings to dissolve a state grazing district;

(11) Hear appeals from state grazing districts;

(12) Approve the creation of new state grazing districts;

(13) Approve boundary changes in state grazing districts;

(14) Approve the merger or subdivision of state grazing districts;

(15) Approve the creation and organization of conservation districts;

(16) Remove supervisors of conservation districts after hearing;

(17) Terminate the existence of conservation districts;

(18) Approve the division or combination of conservation districts after petition;

(19) Adopt rules for the administration of water resource projects owned by the state;

(20) Approve the acquisition by the Department of water rights and other real property interests necessary for the construction of water resource projects;

(21) Approve the mortgage, sale or other disposition of water rights and real property interests owned by the state on its water resource projects;

(22) Approve the exercise of condemnation to acquire property necessary for water resource projects;

(23) Approve whether or not a water resource project should be constructed;

(24) Issue revenue bonds to finance the construction of future water resource projects;

(25) Determine the conditions and terms of bonds or of trust indentures for the construction of water resource projects;

(26) Hear and decide appeals regarding the termination of water purchase contracts, and disputes arising between the department and another party regarding the terms and conditions under water marketing or water purchase contracts;

(27) Issue weather modification licenses and permits;

(28) Adopt rules for the administration of the ground water code (now part of the Water Use Act enacted in 1973).

It is emphasized that this suggested division of responsibility between the Board and the Department represents a substantive change from the Executive Reorganization Act. But, it is a necessary change because of the vague language contained in the Reorganization Act. The change will greatly simplify and clarify the operation of the Department, and remove the legal uncertainty which now surrounds the responsibility of the Board.

This recodification also proposes that the statutory divisions within the Department of Natural Resources and Conservation be eliminated from the law. This proposal also represents a substantive change from the Executive Reorganization Act. However, it is felt that the Department head should have the flexibility to create the internal structure of the Department which best meets the needs of administering the natural resources laws. Creating divisions of the Department by statute binds the Department to an administrative structure which in the future may not be the most efficient or practical.

In all, over 200 sections of the Revised Codes are proposed to be amended in this recodification. Over 50 were found to be either superseded by other laws or obsolete and no longer needed and are, therefore, proposed to be repealed.

It should be noted that H.B. 600 with the proposed amendments to it makes no changes to the Utility Siting Act enacted in 1973, since that Act was originally drafted with the proper agency names and with a clear delineation of authority between the Board and the Department. In addition, no changes are made to the Water Use Act enacted in 1973, except changes to several sections in Title 89, Chapter 29, the groundwater laws, which were amended by the Water Use Act in 1973.

REFERENCE TABLE--RECODIFICATION OF LAWS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (H.B. 600)

This table shows the recommended disposition of each section of the natural resources and conservation laws in the proposed recodification (H.B. 600). It indicates whether a section is to be amended or repealed, or left unchanged. If the section is proposed to be amended or repealed, the reason for the amendment or repeal is given in the comment. Some sections are proposed to be renumbered. When this is proposed, it is indicated in parentheses following the word "amended."

Due to amendments made by the 1973 Legislative Session to several of the laws pertaining to the Department of Natural Resources and Conservation, amendments must be made to H.B. 600 to reflect those changes. Therefore, this table also reflects changes which have not yet been made to H.B. 600, but which will be made if the proposed amendments to it are approved. An * next to the section number indicates that an amendment is proposed to that section of H.B. 600. The comment opposite the section will explain the reason for the proposed amendment.

Section	Change	Comment
28-101	Repealed	The State Board of Forestry was abolished by the Executive Reorganization Act of 1971, section 82A-1505(2). Therefore, none of the material in this section applies, except for the language in the first paragraph pertaining to the purpose of the Board. This purpose language will be re-enacted in new section 28-101.1 following.
28-101.1	New Section	This section re-enacts the language now contained in the first paragraph of 28-101. This language is necessary because the Board of Natural Resources and Conservation may make rules to accomplish the purposes of this chapter under section 28-105(3).

Section	Change	Comment
28-102	Repealed	The powers and duties of the Department should be contained in one section. Therefore, the language of this section will be re-enacted in section 28-106(3).
28-103	Amended	Name and style changes, and superfluous language removed. Subsections (11) and (12) are added to define the Board and Department. The Department is given the function of expanding the fire season under subsection (6), because this function may be of an emergency nature. All other functions under this section are given to the Board.
28-104	Amended	Style changes, and superfluous language removed. Reference to section 28-101 in the second paragraph must be changed to 28-101.1 since section 28-101 is being repealed in this recodification, and 28-101.1 is substituted.
28-105	Amended	Name and style changes, and superfluous language removed. Subsections (c) and (e) of this section are deleted because this language pertains to the powers and duties of the Department which are contained in the next section. The Department is given the function of serving notice under subsection (b), since the Board has no staff as such.
28-106	Amended	This section contains the powers and duties of the Department as contrasted from the Board. Several paragraphs are added to combine language from other sections; namely, 28-105(c), 28-103(9), 28-102, 28-105(e), and 28-107. Other changes are style and drafting.
28-107	Repealed	The material in this section is rewritten in section 28-106(4), the preceding section.
28-108	No change	
28-109	Amended	Name and style changes, and superfluous language removed. The Board classifies forest land under sections 28-103 and 28-105.
28-110	Amended	Style and drafting changes.
28-111	Amended	Name and style changes, and superfluous language removed. The Department is given the responsibility of preparing a fire protection plan, but the Board must approve the same. The Board, under this section, will also establish the portion of the plan fire protection costs to be borne by the State, and

Section	Change	Comment
		the portion to be borne by the owners of classified forest land. Under subsection (3), the Department will certify to county assessors the names of the forest landowners in the county and the statement of the amount owing by each of the forest landowners. There is no need to go to the Board for its approval for this function since this is an unnecessary step and superfluous. The reference to the agency fund of the State Forester in the last paragraph is deleted because the monies remitted are now actually being deposited in the federal and private grant clearance fund for distribution in accordance with section 28-124. Therefore, the last paragraph is re-written to reflect what is actually the practice.
28-112	Amended	Style changes, and superfluous language removed. The Department is added in the last sentence because it too has proceedings which should be subject to judicial review.
28-113	Amended	Name and style changes, and superfluous language removed. The Department carries out all the functions under this section and not the Board.
28-114	Amended	Name and style changes, and superfluous language removed. The Department issues burning permits under this section.
28-115	No change	
28-116	Amended	Name and style changes, and superfluous language removed. The Department is given the function of issuing permits under the previous section, and in this section, the Department prescribes the form and substance of each permit.
28-117 and 28-118	No change	
28-119	Amended	Name and style changes, and superfluous language removed. The Department is given the function of adopting rules for the burning of sawdust piles in this section. These rules should be adopted by the Department, and not the Board, because each case may be different.

Section	Change	Comment
28-120	No change	
28-121	Amended	Name and style changes, and superfluous language removed. There is no longer a foresters cooperative work fund referred to in the first sentence of this section. Therefore, the correct name has been inserted.
28-122	Amended	Name and style changes, and superfluous language removed.
28-123	Amended	Name and style changes.
28-124	Amended	Name and style changes, and superfluous language removed. There is no need to have the secretary of the Board sign vouchers under the last sentence of this section, since modern accounting procedures administered by the Department of Administration take care of this contingency.
28-125	Amended	Name and style changes, and superfluous language removed. The Director will have authority to designate employees of the Department who will be designated as ex officio fire wardens under this section.
28-126	Repealed	All the language in this section is superfluous or redundant, and is either covered by other laws or is true anyhow.
28-127	Amended	Style changes, and superfluous language removed. The Department is inserted in this section because the Department will adopt rules for the burning of sawdust piles under section 28-119.
28-128	No change	
28-129	Amended	Name and style changes, and superfluous language removed. This section has never been utilized to the knowledge of the Department, but if the section were repealed, the substance of the law would be changed.
28-130	Amended (Renumbered 28-204)	Style changes and superfluous language removed. This section and the next four sections are renumbered to be placed in chapter 2 of title 28. These sections deal with forest diseases and should be placed in a separate chapter of the Revised Codes.

Section	Change	Comment
28-131	Amended (Renumbered 28-205)	Style changes and superfluous language removed. Subsection (2) is a re-enactment of language from the next section. All definitions should be in one section.
28-132	Repealed	This section is now incorporated into section 28-131, subsection (2), renumbered 28-205, subsection (2).
28-133	Amended (Renumbered 28-206)	Name and style changes, and superfluous language removed. The Board will approve the declaration of an existence of a zone of infestation under this section. The change from "of" to "or" in line 9 corrects an error made in previous law.
28-134	Amended (Renumbered 28-207)	Name and style changes. The Department will determine when a designated zone of infestation is no longer necessary under this section.
28-301	Amended	Name change.
28-302	No change	
28-303	Amended	Style changes, and superfluous language removed. There is no need to name agencies under subsection (10), as they are included within the term "Departments of the State Government."
28-304 and 28-305	No change	
28-404	Amended	Name changes. This section and sections 28-406 through 28-412 will be repealed by the proposed Forest Practices Act. Therefore, only the absolutely necessary name changes are made in those sections.
28-405	Amended	Name and numbering changes.
28-406	Amended	Name and numbering changes.
28-407	Amended	Name changes.
28-408	Amended	Name and numbering changes.
28-409	Repealed	This section is redundant, as the same authority is provided in the Executive Reorganization Act.

Section	Change	Comment
28-410	Amended	Name and numbering changes.
28-411	Amended	Name changes.
28-412	Amended	Name changes.
28-501 through 28-507	No change	
28-601 through 28-604	No change	
28-701	No change	
46-2301	Amended	Name and style changes, and superfluous language removed.
46-2302	Amended	Name, style and numbering changes, and superfluous language removed. "Commission" is redefined as "Department", and "secretary" is redefined as "Board." There is no longer a Grass Conservation Commission or a secretary of same, as those positions were abolished by the Executive Reorganization Act. Paragraph 12 is deleted because ordinary rules of construction dictate this type of interpretation anyhow.
46-2303 through 46-2306	Repealed	The Grass Conservation Commission was abolished by the Executive Reorganization Act of 1971, section 82A-1502. Also abolished with it was the position of secretary. Therefore, none of these sections apply.
46-2307	Amended	Name and style changes, and superfluous language removed. Language deleted in the first paragraph is either superfluous or outdated. Language in paragraph 4 and all the language in paragraph 6 is deleted as unnecessary or redundant. The Board is given quasi-judicial functions under this section, while the Department is given administrative functions. A substantive change is contained in new subsection (b), where language is added requiring a hearing before the Board may dissolve a district. A hearing would probably be required under ordinary rules or due process anyhow.
46-2308	Amended	Name and style changes, and superfluous language removed. Paragraph 3 of this section is deleted in its entirety since the APA has almost identical requirements, except for the filing of a bond. A bond is considered unnecessary under modern rules of procedure. Para-

Section	Change	Comment
		graph 4 is deleted as the APA now covers this procedure. The Board is given quasi-judicial functions in this section.
46-2309	Amended	Name and style changes. Administrative functions are given to the Department in this section, while quasi-judicial functions are given to the Board. However, the Department will hold a hearing prior to the approval by the Board for the creation of a district under this section.
46-2310	Amended	Name and style changes, and superfluous language removed. The Department will prescribe the articles of incorporation under this section.
46-2311	Amended	Name and style changes, and superfluous language removed. The Department will hold a hearing prior to approval by the Board for a change in boundaries of a district under this section. This is the current practice of the Department.
46-2312	Amended	Name and style changes, and superfluous language removed. The Department will hold a hearing prior to the approval by the Board for a merger or a subdivision of districts under this section. Paragraph 14 is deleted as superfluous, as the same is true anyhow.
46-2313	Amended	Name and style changes.
46-2314	Amended	Name and style changes, and superfluous language removed. "Person" is defined in section 46-2302, as including partnerships, corporations and associations. The Department is given administrative functions under paragraph 2 of this section.
46-2315	Amended	Name and style changes.
46-2316	Amended	Name and style changes, and superfluous language removed.
46-2317	Amended	Name changes. Grazing districts are not defined in the definition section of this chapter; state district is.
46-2318	Amended	Name and style changes, and superflous language removed. Language in the first two sentences is removed because that material is now obsolete. There are no longer grazing associations referred to in the first sentence.

Section	Change	Comment
		The Department is given administrative functions under this section.
46-2319	Repealed	The Mizpah Pumpkin Creek Grazing District no longer exists. Therefore, this section is obsolete.
46-2320 and 46-2321	No change	
46-2322	Amended	Name, style and tense changes, and superfluous language removed. The Department will approve transfers of preference rights under this section, since these matters are of a routine nature.
46-2323	Amended	Name and style changes.
46-2324	No change	
46-2325	Amended	Name and style changes, and superfluous language removed. The third and fourth sentences are rewritten for style with no changes in substance. A substantive change is made in the second sentence by requiring a hearing to be held before the Department, before a district may be dissolved. This would probably be required under constitutional rules of due process. The Board has the ultimate decision of dissolving a district under the last sentence of this section.
46-2326 and 46-2327	No change	
46-2328	Repealed	This section is unnecessary, as the same would be true anyhow.
46-2329	No change	
46-2331	Amended	Name and style changes, and superfluous language removed. The Department is given administrative functions under this section. Since the Department has many other functions besides administering this Act, language is added to make it clear that fees received for the animal unit charges may be used only for the Department's functions under this chapter.
46-2332	Amended	Name and style changes.

Section	Change	Comment
60-124	Amended (Renumbered 60-127.1)	This section is renumbered to place it in a more logical order in the chapter. The definition section and the powers of the board section should come first.
60-125	Repealed	Section 82A-1508 of the Executive Reorganization Act creates a Board of Oil and Gas Conservation. Therefore, this section is unnecessary. The requirements under paragraph D of this section are also required by the new Montana Constitution. Paragraph E is also unnecessary as a duplication of other laws, and the further fact that seals are totally unnecessary. The power of the Board to appoint employees under paragraph F is also superfluous as the Board already has that authority under the Executive Reorganization Act. All other provisions deleted in this section are also superfluous.
60-126	Amended	Name and style changes, and superfluous language removed. The name of the commission has been changed to the Board of Oil and Gas Conservation, under the Executive Reorganization Act. It is impossible to apply the first sentence of paragraph J uniformly, therefore, that sentence is deleted. The second sentence is redundant as that would be true anyhow. Subsection (10) is added to define Department.
60-127	Amended	Name and style changes, and superfluous language removed. Language is added to new subsection (2) to make it clear that the Department does have some administrative control over certain of the Board's functions, pursuant to section 82A-108 of the Executive Reorganization Act. The effective date of the act referred to in new subsection (4) was April 1, 1953.
60-128	Amended	Name and style changes. A reference to section 60-145(4) is inserted as that is the section providing for obtaining a drilling permit.
60-129	Amended	Name and style changes. The effective date of the act referred to in the first sentence was April 1, 1953.
60-130	Amended	Name and style changes.

Section	Change	Comment
60-131	Amended	Name and style changes.
60-131.1	Amended	Name and style changes.
60-131.2	Amended	Name and style changes.
60-131.3	Amended	Name and style changes. The effective date of the act referred to in subsection (1) was March 1, 1971.
60-131.4	Amended	Name and style changes.
60-131.5	Amended	Name and style changes.
60-131.6	Amended	Name and style changes. The effective date of the amendment to title 60 referred to in the first sentence, was February 13, 1969.
60-131.7	No change	
60-131.8	Amended	Name and style changes.
60-131.9	No change	
60-131.10	Amended	Name and style changes.
60-131.11	Amended	Name and style changes.
60-131.12	Amended	Name and style changes. The word "herein" means section 60-131.1 through 60-131.13.
60-131.13	No change	
60-132	Amended	Extensively rewritten to comply with the APA. Many of the provisions in this section are deleted because the Administrative Procedure Act (APA) contains provisions covering the same thing. For example, in paragraph D, requirements are set forth for giving notice where a complaint has been made by the Board or by any person that a provision of the Act or any rule or order of the Board is being or has been violated. The APA provides for the type of notice to be given in these cases. Therefore, paragraph D is entirely superfluous. The same is true for other stricken provisions in this section. Name and style changes are also made to this section.
60-133	Amended	Name and style changes, and superfluous language removed. Language is inserted in the first sentence to take care of the situation where the APA will not apply.

Section	Change	Comment
60-134	Amended	Name and style changes. The APA does not provide for a rehearing.
60-135	Amended	Name and style changes, and superfluous language removed. Chapter 80 of title 93 referred to in the last sentence of this section contain the rules of appellate civil procedure. The APA will not always apply to the appeals under this chapter because there will not always be a contested case as that term is defined in the APA. Therefore, this section is left in.
60-136	Amended	Name and style changes.
60-137	Repealed	This section is obsolete. The rules adopted by the Board contain a provision that those rules supercede any previous rules adopted by the former Board of Railroad Commissioners.
60-138	Repealed	Obsolete.
60-140	Amended	Name and style changes, and superfluous language removed.
60-141	Amended	Name and style changes, and superfluous language removed.
60-142	Amended	Name and style changes, and superfluous language removed.
60-143	Amended	Reference changes.
*60-144	Amended	Name and style changes, and superfluous language removed. The proposed amendment to this section of H.B. 600 deletes the last sentence which was deleted by chapter 208, Laws 1973.
*60-145	Amended	Name and style changes, and superfluous language removed. The second sentence in former subsection (3) of subsection (a) is deleted, because obviously this would be the case anyhow. The words "under seal" are deleted in new subsection (3) because contracts do not require seals under modern law. In addition, former subsection (e) is deleted in its entirety since the Board has authority to appoint employees under other laws and under its implied powers, and the members of the Board are allowed expenses under the Executive Reorganization Act. All other deletions in this section are also because of redundancy or superfluity. The amendments proposed to this section of H.B. 600 are to bring the section into compliance with amendments made by chapter 315, Laws 1973.

Section	Change	Comment
		Those amendments increase the per barrel assessments, and inserted "or stratigraphic test well or core hole" in the final paragraph of former subsection (a).
60-146 and 60-147	Repealed	These two sections transfer the jurisdiction and records of the petroleum field station in Billings from the Bureau of Mines and Geology to the Board of Oil and Gas Conservation. Since the transfer has already taken place, these two sections are obsolete.
60-148	Amended	Name and style changes, and superfluous language removed. This section is also part of chapter 32, Laws 1957. However, this section should be retained since some of the records of the Board are confidential under 60-144. Therefore, there may be occasions when the Bureau of Mines and Geology may need the provisions of this section to gain access to records of the Board.
60-801	Amended	Name and style changes.
60-802	Amended	Name change and numbering of subsections.
60-803	Amended	Name and style changes, and superfluous language removed.
60-804	Amended	Name and style changes, and superfluous language removed. The material in the last sentence is stricken because the manner for the service of process in a civil action is set forth in the Montana Rules of Civil Procedure, and there is no need to refer to the same.
60-805	Amended	Name and style changes, and superfluous language removed.
76-101 and 76-102	No change	
76-103	Amended	Name and style changes, and superfluous language removed. The functions of the State Conservation Commission were transferred to the Department of Natural Resources and Conservation in the Executive Reorganization Act of 1971. The Commission at that time was reconstituted as an advisory council. In 1973, the Legislative Session abolished the State Conservation Commission. Therefore, "commission" is redefined as "department." In addition, a definition of "Board" is inserted as subsection (4), because this term will be used throughout the chapter.

Section	Change	Comment
76-104	Amended	All the material in former subsections (a), (b), and (c) is deleted since the State Conservation Commission no longer exists, and these provisions are unnecessary. Other changes are name and style changes, and removal of superfluous language.
76-105	Amended	Name and style changes, and superfluous language removed. The Board of Natural Resources and Conservation is given the function of approving the creation of the new conservation districts under this section, after notice, hearing and evaluation by the department.
76-106	Amended	Name and style changes. The Department is given the responsibility of supervising the election of supervisors for each district under this section.
*76-107	Amended	Name and style changes. The Board is given the function of removing supervisors under this section. The proposed amendments to this section of H.B. 600 insert two paragraphs that were added by chapter 58, Laws 1973.
76-108 through 76-110	No change	
76-111	Amended	Name and style changes, and superfluous language removed. The Department will remove members of a board of adjustment under this section. There has never been a board of adjustment created in the state under this section.
76-112 and 76-113	No change	
76-114	Amended	Name and style changes, and superfluous language removed. The Board will terminate the operations of a district after hearings and evaluation by the Department under this section.
76-115	Amended	Name and style changes, and superfluous language removed. This section has never been utilized. Substantive change is made to former subsection (c), first paragraph to reflect existing law in the budget act,title 79, Chapter 10, which requires that proposed budgets be submitted to the Department of Administration by August 1.

Section	Change	Comment
76-116	No change	
76-117	Amended	Name and style changes, and superfluous language removed. The Board will determine whether proposed divisions or combinations of districts is administratively practical and feasible after hearing and evaluation by the Department under this section.
81-1401	Amended	The requirements under the material deleted have already been completed so that material is obsolete.
81-1401.1 and 81-1401.2	Repealed	This two sections are obsolete as the lands mentioned in the sections have been exchanged many years ago.
81-1402	No change	
81-1403	Repealed	The position of State Forester was abolished by the Executive Reorganization Act. Therefore this section is unnecessary and obsolete.
81-1404	Amended	Name and style changes.
81-1405	No change	
81-1406	Amended	Name and style changes, and superfluous language removed.
81-1407	No change	
81-1408	Amended	Name and style changes. The word "management" is added to the first sentence, because it does not make sense to "supervise" timber.
81-1409	Amended	Name and style changes.
81-1410	No change	
81-1411	Amended	Name and style changes, and superfluous language removed.
81-1412	Amended	Name and style changes.
81-1413	Amended	Name and style changes.
81-1414	No change	
81-1415	Amended	Name and style changes.

Section	Change	Comment
81-1416	No change	
28-801	New section	Sections 81-1501 through 81-1506 which follow are renumbered to be moved into chapter 8 of title 28 where they more logically belong. This section is enacted as a definition section defining "department" and "portable sawmill." The definition of "portable sawmill" comes from 81-1505 which will be repealed.
81-1501	Amended (Renumbered 28-802)	Name and style changes, and superfluous language removed.
81-1502	Amended (Renumbered 28-803)	Name and style changes, and superfluous language removed. The change in the last sentence is made to reflect actual practice.
81-1503	Amended (Renumbered 28-804)	Name and style changes. The department will issue licenses under this section.
81-1504	Amended (Renumbered 28-805)	Name and style changes, and superfluous language removed.
81-1505	Repealed	"Portable sawmill" will be defined in new section 28-801, supra.
81-1507	Amended (Renumbered 28-806)	Style changes.
81-2009	Amended (Renumbered 89-142)	This section does not really pertain to state lands or water on state lands, but gives the former Water Conservation Board, now the Department of Natural Resources and Conservation, authority to negotiate interstate agreements with other states regarding all interstate waters. Therefore this section is proposed to be moved to title 89, chapter 1. Other changes are name and style changes, and the removal of superfluous language.
81-2018	Amended	Name and style changes, and superfluous language removed.
82-3001 through 82-3003	Repealed	The Council on Natural Resources and Development created and organized under these three sections was abolished by section 82A-1511(1) of the Executive Reorganization Act of 1971. Since the Council had no functions which were transferred in the Executive Reorganization, these three sections are obsolete.

Section	Change	Comment
82A-1501	Amended	The reference to section 82A-1508 in this section is an error because that section has nothing to do with the Director of Natural Resources and Conservation. The reference should be to 82A-1510. However, section 82A-1510 will be repealed since that section will be obsolete if this recodification is enacted. The reference to section 82A-106 is inserted since that is the section governing the appointments of directors of departments.
*82A-1501.1	New section	A section of this type will be added to the laws of each department in the Executive Reorganization Act by the respective recodification of each department. The purpose of this section is to catalog in one section the primary laws the Department administers. This approach was used in the recodification of the health laws in 1967. The proposed changes to this section in H.B. 600 will add a new subsection (7) dealing with utility sites which was a new function given the Department under the Utility Siting Act, enacted in 1973. The other proposed amendment is to correct an error made in H.B. 600, namely, portable sawmill regulation statutes will be renumbered into title 28, chapter 8 under this proposed recodification.
82A-1502 and 82A-1503	Repealed	These sections abolish various agencies or transfer functions of various agencies to the new Department of Natural Resources and Conservation; since the abolitions and transfers have now taken place the sections are obsolete.
82A-1504	Repealed	This section creates by law three of the existing six divisions of the Department of Natural Resources and Conservation. It is proposed that this section be repealed, eliminating the statutory requirement of setting up the divisions named in the section. Although there are no present plans to abolish these three divisions administratively, it is felt that the department directors should have the flexibility for organizing the departments administratively rather than being bound by statutory requirements. The repeal of this section will be a substantive change.
82A-1505 and 82A-1506	Repealed	The transfers under these two sections have already taken place and therefore these sections are obsolete.

Section	Change	Comment
*82A-1507	No change	This section, constituting the State Conservation Commission as an advisory council, was repealed by chapter 188, Laws 1973, in which the Conservation Commission was abolished. The proposed amendment to this section of H.B. 600 merely removes the section since it has been repealed.
82A-1507.1	Repealed	This section was enacted by chapter 188, Laws 1973 and abolishes the State Conservation Commission. Since the abolition has now taken place, the section is obsolete.
82A-1508	Amended	This section continued and renamed the former Oil and Gas Conservation Commission as the Board of Oil and Gas Conservation and transferred the Board to the Department of Natural Resources and Conservation for administrative purposes only. Since the renaming and continuation has now taken place, this language is stricken from the section because it is obsolete. The creation of all agencies, the composition of all boards and the qualification of all board members will be placed in the Executive Reorganization Act, title 82A, so that a quick determination can be made of all agencies from one place in the Revised Codes. The composition of the board, the qualification of board members have been taken from section 60-125.
*82A-1509	Amended	The word "created" in subsection (1) and the words of this Act in subsections (2) and (3) are deleted because they are superfluous. As originally introduced in the 1971 Session, the Fish and Game Commission and the Fish and Game Department would have been abolished and their functions transferred to the Department of Natural Resources and Conservation. Since the Fish and Game Commission members were appointed from five different districts in the state, it was felt that the new Board of Natural Resources and Conservation should be constituted in the same manner. Therefore, the second sentence of subsection (2) was enacted to require that members of the Board be appointed from the same five districts. However, as finally enacted, the Executive Reorganization Act of 1971 did not transfer the functions of the Fish and Game Commission or Department to the new Department of Natural Resources and Conservation. Therefore, it is felt that the second sentence in subsection (2) is unnecessary and it is proposed that it be stricken. Subsection (4) is added to clarify the legal

Section	Change	Comment
		status of the Board. The Montana Constitution requires that all boards, bureaus and agencies be allocated among and within not more than twenty departments, and subsection (4) merely insures that the Board is allocated to the Department of Natural Resources and Conservation to meet this legal requirement. Subsection (5) is proposed to give the Board by law advisory functions to the Department in all other matters in which the Board has no legal authority under this proposed recodification. The proposed amendments to this section of H.B. 600 reflect changes made by chapter 384, Laws 1973, increasing the size of the Board from five to seven members. However, since the second sentence of subsection (2) will be deleted in this proposed recodification, the third sentence added by chapter 384, Laws 1973, must also be deleted.
82A-1510	Repealed	As outlined in the Introduction to these comments, there is a great deal of uncertainty as to the legal powers and authority of the Board of Natural Resources and Conservation due to the fact that the Executive Reorganization Act of 1971 merely stated that the Board was to "concur" in actions of the Director. This is the section that has created the problem. Since the proposed recodification will clearly delineate the powers and duties of the Board and the Department, the concurrence language under this section is no longer necessary. In addition, the language creating the position of Director in stating how he shall be appointed will be prescribed in section 82A-1501 and 82A-106.
82A-1511	Repealed	Obsolete.
82A-1512	Repealed	Since the Mine Land Reclamation Advisory Committee has now been abolished, this section is obsolete.
89-101.1	Amended	The word "act" refers to this chapter and there is no need to refer to the date of the act.
89-101.2	Amended	Name changes.

Section	Change	Comment
89-102	Amended	Name and style changes.
89-102.1	New Section	This section will replace the second sentence of 89-103(3) following, which is repealed.
89-103	Repealed	Since the Water Resources Board has been abolished by the Executive Reorganization Act all the material in this section is obsolete, with the exception of some material which is redundant and superfluous. The second sentence in subsection (3) is re-enacted in a new section 89-102.1 supra.
89-103.1	Repealed	The position of Director of Montana Water Resources Board was abolished by the Executive Reorganization Act of 1971, therefore this section is obsolete.
89-103.2	Amended	Position of Director has been abolished. The remainder of this section deals with the actions of the Department which must receive prior approval of the Board. The Department may not acquire water rights or real property without approval of the Board, nor may the Department construct water projects without Board approval. It must also obtain Board approval prior to making loans for the construction or repair of any water project.
89-103.3	Repealed	Obsolete since the position of Director has been abolished by the Executive Reorganization Act.
89-103.4 through 89-103.6	Repealed	These sections are obsolete since the powers, records, property and funds of the former Carey Land Act Board have been transferred many years ago.
89-103.7	No change	
89-103.8	Repealed	Unnecessary section.
89-104	Amended	Name and style changes, and superfluous language removed. Under this section the Department must obtain approval from the Board before acquiring property or water rights for the construction, operation and maintenance of water resource projects, consistent with 89-103.2 supra.

Section	Change	Comment
*89-105	Amended	Name and style changes, and superfluous language removed. The Department must obtain approval from the Board prior to constructing public works as defined in this chapter. The language in the last paragraph is deleted since the same would be true anyhow. Proposed amendments of this section of H.B. 600 insert changes made by chapter 278, Laws 1973.
89-106	Amended	Name and style changes, and superfluous language removed.
89-107 and 89-108	Repealed	These sections are obsolete since the Sidney Pumping Project authorized by these two sections in 1937 has been constructed.
89-109 and 89-110	No change	The "Board" now defined as the Board of Natural Resources and Conservation in this chapter of title 89, is authorized to issue revenue bonds for the construction of water resource projects under these two sections.
89-111	Amended	Name and style changes, and superfluous language removed. The Board will determine the provisions and security of revenue bonds under this section.
89-112	No change	The Board will determine the trust or mortgage provisions to be included in bonds under this section.
89-113	Amended	Name and style changes. The Board will create the special funds for the administration of and issuance of revenue bonds under this section.
89-114	Amended	Name and style changes, and superfluous language removed.
* 89-115	Amended	Name and style changes, and superfluous language removed. The Department will fix and establish the charges for the sale of water from water resource projects, and will also prescribe the terms of the water purchase contracts under this section. The Board will hear and decide appeals regarding terminations or disputes regarding water purchase contracts. In addition, the Department must obtain Board approval prior to the sale or other disposition of any rights-of-way, easements or real property interests no longer needed for the purposes of

Section	Change	Comment
		this chapter. Proposed amendments made to this section of H.B. 600 reflect changes made by chapter 459, Laws 1973.
89-116	No change	The Board will provide for sinking funds under this section.
89-116.1	Amended	Name and style changes.
89-117	Amended	Name and style changes, and superfluous language removed.
89-118	Amended	Name and style changes, and superfluous language removed. The Department must obtain Board approval prior to selling, leasing, or otherwise disposing of any waters impounded under the provisions of this chapter.
89-119	Amended	Style changes and superfluous language removed. The Department is inserted at the end of the first sentence of this section since the Department will have rights and duties under the contracts and provisions of this chapter.
89-120	Amended	Name and style changes and superfluous language removed.
*89-121 through 89-123	No change	These sections were repealed by chapter 452, Laws 1973. Therefore, the proposed amendments to these sections of H.B. 600 delete the material contained therein.
89-124	Amended	Name and style changes.
89-125	Amended	Name and style changes and superfluous language removed. The Board is inserted in subsection (1) since approval must be obtained from the Board prior to the Department acquiring water rights under section 89-103.2.
89-126	Repealed	Unnecessary.
89-127	Amended	Name and style changes and superfluous language removed. Approval of the Board must be obtained before the Department may sell, lease, or otherwise dispose of waters from its waterworks systems under this section.
89-128	No change	
89-129 through 89-132	Repealed	These sections and sections 133 through 138 are obsolete. They were enacted in 1935 in order for the State to meet the Great Depression and allow the State to participate in federal programs then existing. However,

Section	Change	Comment
		these programs no longer exist and the sections are unnecessary and obsolete.
89-132.1	Amended	This section is the only provision in the law dealing with the Department's responsibility to formulate a state water plan. Name and style changes and superfluous language removed. The Department must obtain Board approval prior to adopting parts of the state water plan. In addition, the Board is given the authority to adopt rules necessary to effect the purposes of this section under subsection (6).
89-133 through 89-138	Repealed	See comment to section sections 89-129 through 89-132 supra.
89-139	Repealed	This section is unncessary. It doesn't add anything to the law.
89-140	Amended	Name and style changes, and superfluous language removed.
89-141	No change	
*89-310	Amended	Style changes and superfluous language removed. The definition of "Board" is inserted. The proposed amendment to this section of H.B. 600 would strike the section in its entirety and insert a new section as amended by chapter 368, Laws 1973.
89-311	Repealed	Unnecessary and obsolete. The other provisions of this chapter provide that the Department is the administrator of the act and section 82A-112 provides for the compensation of Board members.
*89-312	No change	This section was substantially rewritten by chapter 368, Laws 1973. Chapter 368 made the changes that would have been made by H.B. 600. Therefore, no changes in this section are necessary.
*89-312.1	Amended	This section was amended by chapter 368, Laws 1973 and authorizes the Department to establish rules to govern research and development in weather modification and control. However, this function is a quasi-legislative function and should be given to the Board. Therefore, that is the only change made in this section. This section will be inserted as a new section 145 of H.B. 600.

Section	Change	Comment
89-313	No change	The Board will issue licenses and permits for weather modification activities under this section.
*89-314	Amended	This section was rewritten by chapter 368, Laws 1973. Therefore, a new section 89-314 as rewritten will be substituted for 89-314 in H.B. 600. However, this section will be amended to give the Department the function of reviewing applications for weather modification activities and not the Board. The Board will have the authority to adopt rules providing for exemptions under the act. The Department should review the applications since the applications are submitted to the Department under this chapter and the Department will hold hearings.
89-315 and 89-316	No change	The Board will establish the qualifications of licensees under 89-315.
89-317	Amended	Name change.
*89-318	Amended	Name and style changes, and superfluous language removed. This section was also amended by chapter 368, Laws 1973, and therefore a new section 89-318 will be inserted for 89-318 in H.B. 600. Subsection (2) will be amended so that the Department will hold hearings prior to the issuance of a permit for weather modification activities but only if the Board determines that a hearing is necessary. The Board should determine if a hearing is necessary in each case, not the Department.
89-319	No change	
89-320	Amended	Name change.
89-321	No change	
89-322	Amended	Name and style changes.
89-323	No change	The applicant for weather modification permit and license must prove to the satisfaction of the Board his ability to respond in damages in liability under this section.
89-324	Amended	Name changes.
89-325	Amended	Name changes.

Section	Change	Comment
89-326	Amended	Name and style changes. The Department should be given the responsibility of requiring information from the applicants since that is an administrative function. However, the Board could also adopt rules under its authority requiring the same information.
89-327	Amended	Name and numbering changes. The Department is given the function of requiring written reports under this section.
89-328	Amended	Name change.
89-329	No change	The Board has the authority to modify, suspend, revoke or refuse to renew any license or permit under this section.
89-330	Amended	The Department is added to this section as required by the Executive Reorganization Act.
89-331	No change	
89-401	Amended	Name and style changes. The words "water resource" are added in the first sentence to make it clear that funds received from the administration of the Water Conservation Act may be used only for water resource functions and not for other functions of the Department.
89-402	Amended	Name changes
89-501	No change	
89-701	No change	
*89-702	No change	This section was amended by chapter 209, Laws 1973 and made the same amendments as proposed by H.B. 600. Therefore, this section of H.B. 600 will be deleted by the proposed amendments.
*89-702.1	No change	Same as previous section.
89-703 through 89-714	No change	
89-801 through *89-801.2	No change	These sections were repealed by chapter 452, Laws 1973, the Water Use Act.
89-805	No change	
89-806	Amended	Name change.

Section	Change	Comment
*89-809	No change	This section was repealed by chapter 452, 1973 and therefore will be deleted in the proposed amendments to H.B. 600.
*89-813	No change	This section was also repealed by chapter 452, Laws 1973 and therefore will be deleted in the proposed amendments to H.B. 600.
89-817 through 89-820	No change	
89-823 through 89-826	No change	
89-827 and 89-828	Repealed	These sections pertaining to the construction of reservoirs are redundant as sections 89-701 and 89-702 provide for the same thing.
89-843	No change	
89-846	No change	
89-847 through *89-849	No change	These sections were repealed by chapter 452, Laws 1973 and therefore will be deleted from H.B. 600 by the proposed amendments.
*89-851	No change	This section was also repealed by chapter 452, Laws 1973 and will be deleted in the proposed amendments to H.B. 600.
89-856	No change	
89-865 through 89-8-102	No change	These sections are a codification of the Water Use Act enacted in 1973. No name changes in the Act are necessary.
89-903	No change	This sections contains the provisions of the Yellowstone River Compact. The compact may not be amended without the consent of all the signatory states and approval of Congress, and therefore no changes are recommended in this section.
89-904 and 89-905	No change	
89-906	Amended	Style and changes and a definition of "Department" added since this term will be used in the following sections.
89-907	Amended	Name changes.

Section	Change	Comment
89-908	Amended	Name change.
89-909	Amended	Name and style changes.
89-910 and 89-911	No change	
89-912	Amended	Name and style changes. The Board is given the function of adopting rules for the implementation of the Yellowstone River Compact under this section and the Department is given the responsibility of enforcing those rules.
89-913	No change	
89-914	Amended	Name and style changes.
89-915	Amended	Name change.
89-916	Amended	Name and style changes.
*89-1001	No change	This section was amended by chapter 452, Laws 1973, the Water Use Act, and made changes identical to those proposed by H.B. 600. Therefore, this section will be eliminated in the proposed amendments.
89-1002 through 89-1024	No change	
89-1101 through 89-1106	No change	
89-1201	Amended	Name changes.
89-1202 through 89-1214	No change	
89-1215	Amended	Name changes. The functions of the former State Examiner, pertaining to irrigation districts, were transferred to the Department of Intergovernmental Relations by the Executive Reorganization Act of 1971.
89-1216 through 89-1220	No change	
89-1905	Amended	Name and style changes.
*89-2911	Amended	Name and style changes. This section was substantially amended by chapter 452, Laws 1973, the Water Use Act, therefore, section 89-2911 as contained in H.B. 600 will be deleted and the new section substituted by the proposed amendments.

Section	Change	Comment
*89-2913	No change	This section was repealed by chapter 452, Laws 1973 and therefore will be deleted from H.B. 600 by the proposed amendments.
89-2914	Amended	Name changes.
*89-2915	Amended	Name and style changes. This section was also amended by chapter 452, Laws 1973, and therefore the new section as amended will be substituted in H.B. 600 by the proposed amendments.
89-2916	Amended	Name and style changes.
*89-2917	Amended	Name and style changes, and superfluous language removed. Chapter 452, Laws 1973 also amended this section. Therefore, 89-2917 in H.B. 600 will be deleted and new section 89-2917 will be inserted by the proposed amendments.
*89-2918	Amended	Name and style changes. A new section 89-2918 will be inserted by the proposed amendments to H.B. 600 due to changes made by chapter 452, Laws 1973.
*89-2919	No change	This section was repealed by chapter 452, 1973 and therefore this section will be deleted by the proposed amendments to H.B. 600.
89-2924	No change	Same as preceding section.
89-2926	Amended	Name changes.
89-2927	Amended	Name and style changes.
89-2928	No change	
*89-2928.1	Amended	Name changes. This section was enacted by chapter 452, Laws 1973, and will be inserted as a new section 192.1 by the proposed amendments to H.B. 600
89-2929	No change	
89-2930	Amended	Name change.
89-2931	Amended	Name changes. The Board will prescribe rules concerning and providing for inspection and entry under this section and the Department will enforce the same.

Section	Change	Comment
89-2932	Amended	Name changes.
89-2933	Amended	Name and style changes.
89-2934	Amended	Name changes.
*89-2934.1	Amended	Name change. This section, enacted by chapter 452, Laws 1973, will be inserted in H.B. 600 in section 198 by the proposed amendments.
*89-2935	No change	This section was repealed by chapter 452, Laws 1973 and will be deleted from H.B. 600 by the proposed amendments.
89-2936	Amended	Name and style changes.
89-3401 89-3402	No change	
89-3403	Amended	Name and reference changes.
*89-3404	No change	This section was amended by chapter 19, Laws 1973, which made the same amendments as proposed by H.B. 600. Therefore, this section will be deleted by proposed amendments to H.B. 600.
*89-3405	Amended	Name changes. The reference to State Soil Conservation Committee has been deleted since the Conservation Committee also known as the Conservation Commission was abolished in the 1973 Legislative Session.
89-3406	Amended	Name and reference changes.
*89-3407	Amended	Same as comment to 89-3405.
89-3408	Amended	Name changes.
89-3409	No change	
89-3410	Amended	Name change.
89-3411 through 89-3414	No change	
89-3415	Amended	Grammar change. This section does not make any sense without insertion of the word "may," otherwise this section is not a complete sentence. "May" is obviously what was intended.
89-3416 through 89-3420	No change	

Section	Change	Comment
89-3421	Amended	Name changes.
89-3422	Amended	Name changes. The functions of the State Examiner were transferred to the Department of Intergovernmental Relations by the Executive Reorganization Act of 1971.
89-3423 through 89-3437	No change	
89-3438	Amended	Name and reference changes.
89-3439 through 89-3448	No change	
*89-3449	Amended	Name changes. The reference to Conservation Commission has been deleted because the Commission was abolished by the Legislative Session in 1973.
89-3501	No change	
89-3502	Amended	Name change and renumbering of subsections.
*89-3503	Amended	Name and style changes. "Board" is redefined as the Board of Natural Resources and Conservation. This section was amended by chapter 294, Laws 1973, and therefore the proposed amendments to H.B. 600 delete section 89-3503 and substitute new section 89-3503 as amended.
*89-3504	Amended	Name, style and reference changes, and superfluous language removed. The Board will adopt rules and minimum standards under this section and the Department will initiate floodway delineation studies. The proposed amendments made to this section of H.B. 600 will bring the section into compliance with amendments already made by chapter 294, Laws 1973.
*89-3505	Amended	Style and reference changes. This section was amended by chapter 294, Laws 1973, and in those amendments a reference to subsection (4) of 89-3504 was inserted. However, section 89-3504 has no subsection (4). Therefore, the reference to that subsection will be deleted. The proposed amendments to this section of H.B. 600 will strike this section as it appears in H. B. 600 and substitute new section 89-3505 as amended in the last session.

Section	Change	Comment
*89-3506	Amended	Style changes and superfluous language removed. The language "before the land use regulations adopted by the political subdivision are effective or" inserted in the second sentence is necessary to make the section make any sense. The intent of this sentence is obviously to exempt existing uses in delineated floodways prior to the effective date of the land use regulations adopted for a delineated floodway. However, the sentence, as enacted in 1971, made no reference to existing uses established prior to the effective date of those land use regulations. Therefore, the sentence is rewritten to carry out legislative intent. A reference to subsection (4) of section 89-3504 in the second sentence is deleted because there is no subsection (4) of that section. This section was amended by chapter 294,Laws 1973 and therefore, for clarity, the entire section 89-3506 in H.B. 600 will be deleted by the proposed amendments and new section 89-3506 will be inserted.
89-3507	Amended	Name, style and reference changes. The Board will issue permits for the establishment or alteration of obstructions under this section, and applications for permits will be submitted to the Department.
*89-3508	Amended	Name, style and reference changes. The Department will remove obstructions under this section and the Board will issue orders to owners of obstructions for their removal. The reference to subsection (4) of 89-3504 is deleted since there is no subsection (4) in that section. The section was amended by chapter 294,Laws 1973, and therefore, for clarity, the entire section 89-3508 will be deleted by the proposed amendments to H.B. 600, and new section 89-3508 will be inserted.
89-3509	Amended	Name and style changes, and superfluous language removed.
89-3510	No change	The Board will declare when a particular water course or drainway less than 25 square miles in extent is subject to the covereage of this act under this section.
89-3511	Amended	Name, style and reference changes, and superfluous language removed. The Board is authorized to adopt orders and rules necessary to implement the act under this section.

Section	Change	Comment
89-3512	Amended	Name, reference and style changes, and superfluous language removed.
89-3513	No change	
89-3514	Amended	Name and style changes, and superfluous language removed.
89-3515	Amended	Name and style changes.
*93-9908	Amended	Name and reference change. The reference to section 93-804 in the last sentence is an error as there is no such section. The reference obviously refers to section 60-804. This section was amended by chapter 197, Laws 1973. The proposed amendments to this section of H.B. 600 insert language that was inserted by chapter 197.
93-9911	Amended	Name change.

Ex. 3.

RESOLUTION

BOARD OF NATURAL RESOURCES AND CONSERVATION

WHEREAS, House Bill 600 was introduced in the 1973 Legislative Session, and was held over until the 1974 Legislative Session; and

WHEREAS, H. B. 600 recodifies the laws of the Department of Natural Resources and Conservation; and

WHEREAS, the members of the Board of Natural Resources and Conservation have reviewed H.B. 600, including the proposed amendments, and the written comments and explanation thereto; and

WHEREAS, the Board believes that H.B. 600 if enacted will substantially improve the laws administered by the Board and Department; and

WHEREAS, H.B. 600 if enacted will clarify the existing ambiguous law regarding the concurrence powers of the Board;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION that the Board endorses and supports H. B. 600 in its present form with the proposed amendments.

Dated this 14TH day of January, 1974.

Chairman

WITNESS STATEMENT

Name Everett Snortland Date 1/19/74

Address 201 East 6th ave Helena Support ?

Representing Montana Farm Bureau Oppose ? X

Which Bill ? HB 600 Amend ?

Comments:

Need more time to study the newly added amendments.

Please leave prepared statement with the committee secretary.

Thursday, January 24, 1974

The Natural Resources Committee convened at 10:08 am in room 437 with Chairman Shelden presiding and a quorum present. The committee had convened early to consider HB 600. Chairman Shelden called on Ted Doney. Mr. Doney reported that he had met with Mr. Swanberg and several of the opponents and they now seemed satisfied with the bill as amended. There were three more mostly housecleaning amendments presented by Rep. Swanberg. These are exhibit 1.

Rep. Swanberg moved that the three new amendments be added to the already proposed amendments and that HB 600 as so amended do pass. A roll call vote was taken--all voting for the motion of do pass except Reps. Schye and Walborn who voted no. Rep. Huennekens was absent when the vote was taken.

Chairman Shelden called a short recess as it lacked ten minutes of being the usual meeting time.

When the committee again convened at 10:30 am, Chairman Shelden asked if there were any testifiers for HB 688. He stated he had received a call asking if the hearing on this bill could be postponed. As there were no testifiers present, the bill will be rescheduled.

HJR 45 Chairman Shelden opened the meeting to a hearing on this resolution. Rep. Schepens, the resolution's sponsor as well as the sponsor of HB 835 and 836, gave a background statement on all bills. He said agricultural people in the eastern part of the state were frightened when they viewed the coming coal industry's demand for water. He said there just wasn't enough acre feet of water at the low point to meet both agriculture's and coal's needs. HJR 45 he said deals with his people's concern about groundwater as it may be affected by their close proximity to the coal mines.

Kit Muller, Northern Plains Resource Council, introduced the following proponents.

Clyde Jarvis, President of Montana Farmers Union, was the next speaker and presented to the secretary and all members a copy of his testimony, which is exhibit 2.

Thomas E. Weir, Wibaux, stated the primary concern in his county are the wells from which the overwhelming majority get their water. He stated the fear was that removal of aquifers by the strip mining might affect these as there had been no long range studies to determine just what affect it might have. Also, what affect would it have when they flush great quantities of water into the aquifers. Mr. Weir urged that this resolution be given favorable report so these things could be checked into before it was too late.

Kit Muller present petititions signed by 228 landowners in the Bull Mts., Otter Creek, Rosebud around Colstrip, Birney, Kirby, Decker, Hysham-Sarpy, Volberg-Pumpkin, Powderville, Miles City -Broadus, Kinsey, Broadus, Boyes, Circle- Vida, Lindsay areas requesting studies of the ground water in their areas. These petitions are exhibit 3 and part of the record.

Ex. 1

Swanberg

Amendments - H.B. 600

Amend on page 58, line 12, by deleting the following: "and provided further, that no such"

Sept 96, Subsection (2)

Further amend on page 151, lines 7 and 8, by omitting the following: "and with other available information"

Further amend on page 155, line 22, by deleting the words "lumbering practice" and inserting in lieu thereof "forest management practices"

Continued on Page 3

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

February 20, 1974

The meeting of the Executive Reorganization Committee was called to order by Chairman Keenan on February 20, 1974 in Room 402 of the State Capitol Building at 12 noon.

ROLL CALL: All members were present with the exception of Senators Carl and McOmber.

CONSIDERATION OF HOUSE BILL 600: Chairman Keenan introduced Representative Fasbender, who spoke as author of the bill, saying that this bill had undergone a considerable amount of work in the House and also during the interim. He commented that if there were any questions regarding HB 600 they should be directed to Gary Wicks and Ted Doney, who were present, and representing the Department of Natural Resources.

Gary Wicks said that 99% of the amendments are for recodification.
1. It removes the concurrence power of the bill. Delineates responsibilities of what the board does.

2. Removes statutory requirements.

Representative Swanberg said he did not have anything to add but this one had been the one most thoroughly gone over and urged concurrence.

Since there were no opponents to the bill, Chairman Keenan asked the committee for their remarks. Senator Boylan asked as to the position of the board and Gary Wicks said that pages 3 and 4 contained a good summary of the bill and takes up the responsibilities of the board.

Senator Deschamps asked whether Miss Borg had gone over this one and Miss Borg suggested that Al Taylor explain and he stated that there were no substantive amendments.

When the Chairman asked the pleasure of the committee on HB 600, Senator Deschamps said that since it is a House bill there is no hurry. Senator Shea moved to have action deferred, seconded by Senator Deschamps and carried.

Friday, February 22, HB 590 will be heard.

Senator Aber moved to have HB 617 re-referred to agriculture committee, seconded and carried.

Meeting adjourned.

Keenan

SENATOR P. J. KEENAN, CHAIRMAN

ROLL CALL

EXECUTIVE REORGANIZATION COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Date 2-20-74

NAME	PRESENT	ABSENT	EXCUSED
SEN. BOYLAN, V. CHAIRMAN	X		
SENATOR ABER	X		
SENATOR CARL		X	
SENATOR DESCHAMPS	X		
SENATOR GOODHEART	X		
SENATOR McOMBER		X	
SENATOR ROSELL	X		
SENATOR SHEA	X		
SENATOR SIDERIUS	X		
SENATOR STORY	X		
SENATOR KEENAN, CHAIRMAN	X		

Each day attach to minutes

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

March 1, 1974

The meeting of the Executive Reorganization Committee was called to order by Senator P. J. Keenan, Chairman, on the above date in room 402 of the State Capitol Building at 12:00 noon.

ROLL CALL: All members were present except Senators Boylan and McOmber who were absent and Senator Carl who was excused.

CONSIDERATION OF HOUSE BILL NO. 595: Act for codification and general revision of laws relating to the Department of Health and Environmental Sciences.

Mr. Pat Melby, Government Operations Unit of the Governor's office, said that members of the Board had reservations on the bill. He talked to Mr. Eckel and Mr. Bartlett, and they were in favor of the bill. He added there was a meeting with people who were affected by actions of the Board and asked for their support or acquiescence of the bill.

Mr. Melby stated the updated amendments to the bill, which are shown on the Standing Committee Report.

Dr. John Anderson stated he did not have further testimony.

Senator Aber moved the amendments BE ADOPTED, seconded by Senator Goodheart. The motion carried unanimously.

Senator Siderius moved the bill AS AMENDED BE CONCURRED IN. Senator Deschamps seconded the motion which carried unanimously. Senator Goodheart will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL NO. 600: Revision of the laws relating to the Department of Natural Resources.

Mr. Ted Doney, Deputy Director of the Department of Natural Resources, said their Board had reviewed the bill and had adopted a Resolution endorsing the bill unanimously.

He offered a proposed amendment to the title, which is appended to the minutes. He said the amendment was to assure the bill was in compliance with the constitution.

Senator Goodheart moved the adoption of the amendments, seconded by Senator Deschamps. The motion carried unanimously.

Senator Goodheart moved and Senator Deschamps seconded the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously. Senator Keenan will carry the bill on the Senate floor.

Chairman Keenan announced that House Bill 294 would be heard on Monday, March 4, 1974.

ROLL CALL

EXECUTIVE REORGANIZATION COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974 Date 3/1/74

NAME	PRESENT	ABSENT	EXCUSED
Senator Boylan		X	
Senator Aber	X		
Senator Carl			X
Senator Deschamps	X		
Senator Goodheart	X		
Senator McOmber		X	
Senator Rosell	X		
Senator Shea	X		
Senator Siderius	X		
Senator Story	X		
Senator Keenan	X		

Each day attach to minutes

Proposed Amendments to H.B. 600

Department of Natural Resources and Conservation

Amend the House Third Reading bill on page 2, line 9, in the title after the second word "FOR" and before the word "REVISION" by inserting "THE CODIFICATION AND GENERAL"

Further amend the House Third Reading bill on page 2, line 10, in the title after the word "RESOURCES" by inserting "AND CONSERVATION"

amounts shall be established from the tuition rate and *other* information reported by the district in which the pupil attended school. No tuition shall be due when a pupil attends less than forty (40) days of school in such district."

Approved March 21, 1974

CHAPTER NO. 252

AN ACT TO AMEND SECTION 28-109, R.C.M. 1947, PROVIDING FOR AN INCREASE IN FIRE PROTECTION AND SUPPRESSION FEES PAID BY OWNERS OF CLASSIFIED FOREST LAND FROM NOT MORE THAN TEN CENTS (10¢) PER ACRE TO NOT MORE THAN SIXTEEN CENTS (16¢) PER ACRE FOR CLASS I LANDS AND FROM NOT MORE THAN THREE CENTS (3¢) PER ACRE TO NOT MORE THAN FIVE CENTS (5¢) PER ACRE FOR CLASS II LANDS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-109, R.C.M. 1947, is amended to read as follows:

"28-109. **Duty of owner of classified forest land.** Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than *sixteen cents (16¢)* per acre per year for Class I land and not more than *five cents (5¢)* per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a), above.

(c) Class III Land. Shall include lands primarily suitable for grazing or other agricultural purposes including structures and improvements which are within the forest fire protection areas but not meeting the detailed definitions of lands described in subsection (b), above. These lands may only be listed for payment when requested by the landowner at rates determined by the state forester and shall be submitted to the county assessor for collection and disposition as provided in section 28-111."

Section 2. This act shall be effective on its passage and approval.

Approved March 21, 1974

CHAPTER NO. 253

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 28-101.1, R.C.M. 1947, which reads as follows:

28-101.1. **Purpose of chapter.** It is the purpose of this chapter to provide for the protection and conservation of forest resources, range, and water, regulation of streamflow, and the prevention of soil erosion. It is further the purpose of this chapter to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

Section 2. Section 28-103, R.C.M. 1947, is amended to read as follows:

"28-103. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Forest land" means land which has enough timber, standing or down, slash, or brush, to constitute in the judgment of the board a fire menace to life or property; grassland and agricultural areas are included when *those* areas are intermingled with or contiguous to areas of forest land.

(2) "Lands" for conservation purposes *means* all forest lands within *this* state which are officially classified by the board as forest lands in accordance with *section* 28-104(b).

(3) "Forest fire" means a fire burning uncontrolled on forest lands.

(4) "Organized forest fire protection *district" means* a definite forest land area, the boundaries of which are fixed, and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(5) "Recognized agency" means an agency representing owners of

forest lands in an organized forest fire protection district, organized for the purpose of providing forest fire protection in *the* district and recognized by the board as giving adequate fire protection to forest lands in accordance with rules *adopted* by the board. *A* public agency administering and protecting forest lands may also be recognized by the board as such an agency.

(6) "Forest fire *season" means* the period of each year beginning on May first and ending on September thirtieth, inclusive; however, in the event of excessive or great fire danger, this period may be expanded when in the judgment of the *department* dangerous fire conditions exist. When expanded, the *department* shall give public notice.

(7) "Forest fire *protection" means* the work of prevention, detection and suppression of forest fires.

(8) "Protection zone" means a broad area within which the forest fire protection costs are approximately the same. Protection zones *shall* be designated by the *department*, with the approval of the board.

(9) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of *this* state.

(10) "Owner" means the person, firm, association or corporation having the actual, beneficial ownership of forest land, or timber, other than an easement, right of way, or mineral reservation.

(11) "Board" means the board of natural resources and conservation, provided for in section 82A-1509.

(12) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15."

Section 3. Section 28-104, R.C.M. 1947, is amended to read as follows:

"28-104. **Responsibility of actual owner of land or timber — scope of act.** *(1) If* the owner does not appear upon the public records as the holder of the legal title to *the* land or timber, he is nevertheless primarily responsible for the performance of the acts and duties imposed upon him by this *chapter.* Where the owner of the timber is not the owner of the land, the primary responsibility for the performance of the acts and duties imposed by this *chapter is* upon the owner of the timber.

(2) Sections *28-101.1 through* 28-129 apply to all forest lands within *this* state which *are* officially classified by the board as forest lands according to the definition of forest land in section 28-103."

Section 4. Section 28-105, R.C.M. 1947, is amended to read as follows:

"28-105. **Powers of board.** *The board may:*

(1) Classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and change or modify *the* classification from time to time as in its judgment *is* proper.

(2) Create organized forest fire protection districts. *Before a* district *is* created the board shall hold a hearing in any county in which *the* proposed district or a part thereof *is* included and *the department* shall give notice of *the* hearing at least twenty (20) days in advance thereof to all owners to be affected by *the* proposed district. *Service* of *the* notice may be made by registered or certified mail or by publication in a newspaper published in the county in which *the* hearing is to be held, and if no newspaper is published in *the* county then in a newspaper having a general circulation therein. *A* forest fire protection district may *not* be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in *the* proposed forest fire protection district.

(3) Adopt and enforce *through the department* reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this *chapter*; however, *these* rules *may* not conflict with the powers of the board of land commissioners."

Section 5. Section 28-106, R.C.M. 1947, is amended to read as follows:

"28-106. **Powers and duties of department.** *(1)* The *department may* give technical and practical advice to the farmers of the state concerning forest, *range, water, and soil* conservation and the establishment and maintenance of woodlots, windbreaks and shelters.

(2) The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

(3) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(4) The department shall assist the department of state lands in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions."

Section 6. Section 28-109, R.C.M. 1947, is amended to read as follows:

"28-109. **Duty of owner of classified forest land.** *(1) An* owner of forest land classified as such by the board *shall protect* against the starting or existence, and suppress the spread, of fire on *that* land during the full period of each forest fire season. *This* protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection *adopted* by the board. If *the* owner does not provide for *the* protection and suppression, *the department* may provide *it*, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land; in the event thereof, the owner of *the* land shall pay to the county treasurer of the county in which *the* land is situated the charge for the same approved by the *department*, in accordance with this *chapter.* No other charges *may* be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

(2) The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land: forest land primarily suitable for production of timber, *and* forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land: lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a) above.

(c) Class III Land: lands primarily suitable for grazing or other agricultural purposes, including structures and improvements, which are within the forest fire protection areas but *do* not *meet* the detailed definitions of lands described in subsection (b) above. These lands may only be listed for payment when requested by the landowner at rates determined by the *department* and shall be submitted to the county assessor for collection and disposition as provided in section 28-111."

Section 7. Section 28-110, R.C.M. 1947, is amended to read as follows:

"28-110. **What constitutes compliance.** *(1) An* owner of Class I *or* Class II forest lands within an organized forest protection district, while a member of, or while participating in a recognized agency for forest protection shall be *considered* to have fully complied with the requirements of section 28-109.

(2) In establishing boundaries of organized forest fire protection districts covering *Class I or Class II* forest lands, the board may for the purpose of administrative convenience designate roads, pipelines, streams, or other recognizable landmarks as boundaries."

Section 8. Section 28-111, R.C.M. 1947, is amended to read as follows:

"28-111. **Determination of costs of fire protection — certification — tax levy.** *(1)* The *department shall* prepare a fire protection plan for the approval of the board in which fire protection costs for each classification within each protection zone *are* determined. The board *shall* establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The *department shall* request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the *department shall* cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the *department* shall determine the names of all owners who have failed to provide the forest fire protection for their lands required by this *chapter*, together with the description of *the* lands and *their* acreage, and calculate the total amount due to the *department* from each owner for forest fire protection, which *amount may* not exceed the maximum specified *in section 28-109.*

(3) The *department* shall certify in writing to the county assessor of each county the names of *these* owners of forest lands in his county, together with a description of *their* lands and a statement of the amount found to be due and owing by each of *the* owners to the *department* for forest fire protection.

(4) Upon receiving *the* certificate from the *department* showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering *the* lands, and *the* sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums collected shall be promptly transmitted to the state treasurer, who *shall* deposit *them* in the *federal and private grant clearance fund for distribution in accordance with section 28-124."*

Section 9. Section 28-112, R.C.M. 1947, is amended to read as follows:

"28-112. **Payment under protest.** *An* owner who is required to pay to the county treasurer any sum for forest protection as required by this *chapter* and who contends that he is not legally obligated to pay *the* sum or some part thereof, shall pay *it* to the county treasurer under written protest stating the reasons for *the* protest. *The* payment under protest, and all proceedings subsequent thereto, shall be in conformity with the law of *this* state providing for the payment of taxes under protest and action to recover the same. In the hearing and determination of any action to recover *the* payment under protest, all questions of the legality and reasonableness of the proceedings of the board *and the department* may be reviewed and decided."

Section 10. Section 28-113, R.C.M. 1947, is amended to read as follows:

"28-113. **Amount due for protection — lien on land — remedies.** Whenever the *department* provides forest protection during a forest fire season for any forest land or timber not protected by the owner thereof as required by this *chapter*, the amount due for *the* forest protection *is* a lien upon *the* land or timber which shall continue until such time as the amount due *is* paid. *The* lien *has* the same force, effect and priority as general tax liens under the laws of the state, and *is* subject and inferior only to tax liens on *the* lands. The county attorney of the county in which *the* land is situated shall on request of the *department* foreclose the lien in the name of the state and in the manner provided by law, or *the* county attorney upon the request of the *department*, shall institute an action against the forest landowner, in the name of the state, in any district or justice court having jurisdiction, to recover the debt, and the state in *the* action *is* not required to pay any fees or costs to the clerk of the court or justice of the peace. The complaint and all subsequent proceedings in *the* action shall conform as nearly as practicable to that provided by section 84-4302. The remedies provided by this section *are* cumulative and *do* not affect the other provisions of this *chapter* for the payment and collection of amounts due to the *department."*

Section 11. Section 28-114, R.C.M. 1947, is amended to read as follows:

"28-114. **Permit for burning required.** During the forest fire season

or *an* expansion thereof *a* person *may not* ignite or set *a* forest fire, slash burning fire, land clearing fire, debris burning fire, or *an* open fire, within forest lands, without an official written permit to ignite or set *the* fire from a firewarden or peace officer authorized by the *department* to issue such permits for *forest* lands. *A* permit *is not* required *in order* to build, set or ignite a campfire within and upon a designated improved camping ground, or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom."

Section 12. Section 28-116, R.C.M. 1947, is amended to read as follows:

"28-116. **Penalty for failure to comply with permit.** *A* person to whom a written permit *is* issued to set or ignite a fire within forest lands during the forest protection season shall comply strictly with the permit. *A* person *who fails* to comply with *the permit, leaves the* fire unattended, *leaves the* fire before it *is* totally extinguished, or negligently *allows the* fire to spread from or beyond the burning area defined by the permit, *is* guilty of a misdemeanor. The *department* shall prescribe the form and substance of such permit."

Section 13. Section 28-119, R.C.M. 1947, is amended to read as follows:

"28-119. **Sawdust piles — restrictions.** *(1) Before* each *forest* fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas, *shall* treat, dispose of, remove or reduce the hazards created so that *the* accumulation of sawmilling waste does not constitute a fire hazard.

(2) A sawmill located within or contiguous to forest lands *may not* accumulate in one pile, sawdust in excess of an amount resulting from the sawing of five hundred thousand (500,000) feet log scale of sawlogs, however, a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the *department. If* burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with *rules adopted* by the *department.*"

Section 14. Section 28-121, R.C.M. 1947, is amended to read as follows:

"28-121. **Disposition of fines collected.** *Fines* collected in *a* court of the state under this act shall be transferred to the state treasurer for deposit *in the federal and private grant clearance fund.* Whenever a person is convicted in any court of a violation of this act, the court *may* levy and collect as costs in *the* case the amount necessary to compensate the county for the expenditures made in and for the prosecution of *the* offender. *These* costs when collected shall be deposited by the court, with the proper county treasurer for the benefit of *the* county."

Section 15. Section 28-122, R.C.M. 1947, is amended to read as follows:

"28-122. **Land commissioners and county commissioners to cooperate.** The *department of state lands* and boards of county commissioners may *cooperate* with the *department* to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The *department of state lands* and the boards of county commissioners may list forest lands under their jurisdiction with *a* recognized agency or the *department* for forest protection. *The* moneys the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties."

Section 16. Section 28-123, R.C.M. 1947, is amended to read as follows:

"28-123. **Disposition of moneys.** The following funds may be expended as directed by the *department* for fire prevention, detection, suppression and *for* forest range, water, and soil conservation: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for violations of this *chapter*; the state's share of the *cooperative* fire protection funds allocated by the federal government; any other funds provided for the purposes herein indicated. All other *cooperative* funds collected, appropriated or allocated for the use of the *department*, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of windbreaks and woodlots in localities where *those* forest plantings are helpful, and funds for other *cooperative* work, *may* not be expended except for the specific purposes for which *they* were collected, appropriated or allocated."

Section 17. Section 28-124, R.C.M. 1947, is amended to read as follows:

"28-124. **Disbursement of moneys.** All *cooperative* moneys collected under section 28-111 and appropriated or allocated for the use of the *department* and deposited with the state treasurer shall be transferred to the earmarked revenue fund. *These* moneys may then be paid out after approval and request of the *department.*"

Section 18. Section 28-125, R.C.M. 1947, is amended to read as follows:

"28-125. **Ex officio fire wardens — powers.** The officers, employees and persons hereinafter designated are hereby declared ex officio fire wardens to serve without compensation for the purposes of enforcing the penal provisions of this *chapter*, enforcing any rule *adopted* by the board *under* this *chapter*, and enforcing any state or federal forest laws: Members of the board, the *director of the department and any employee of the department designated by him*, officers of organized forest protection districts, members of the Montana highway patrol, all field officers in the United States forest service residing in Montana, game and deputy game

wardens, *and* officers of the national park service and the Indian service situated in Montana. For those purposes set forth above, *an* ex officio fire *warden has* all the powers *of fire wardens under* section 81-1413."

Section 19. Section 28-127, R.C.M. 1947, is amended to read as follows:

"28-127. **Penalty for violation of chapter.** *A* person who violates this *chapter*, or any rule *adopted* by the board *or department* pursuant to this *chapter*, is guilty of a misdemeanor unless otherwise provided by this *chapter*, and shall be punished by a fine of not more than five hundred dollars *($500)* or imprisonment in a county jail for not more than six (6) months, or both."

Section 20. Section 28-129, R.C.M. 1947, is amended to read as follows:

"28-129. **Owners of forest lands may have hearing before board — conditions.** *An* owner of forest land within *an* organized forest *fire* protection district *is entitled to* a hearing before the board, *after a request therefor* on any subject pertaining to the activities of the board or of the *department*, or any recognized agency as agent of the *department*, affecting *the* owner's property. *A* request for a hearing before the board *may not* have the effect of suspending the operations of the board *or the department*, or any agent of the *department*, undertaken pursuant to this chapter, but, upon *the* hearing, the board may terminate *those* operations if found unreasonable. *A* hearing pertaining to costs charged against the forest land of *an* owner for protection thereof, as provided in section 28-109, must be requested on or before the fifteenth day of August of each year."

Section 21. Section 28-130, R.C.M. 1947, is renumbered 28-204, and is amended to read as follows:

"*28-204.* **Policy for control of forest diseases.** It is the public policy of the state to protect and preserve forest resources from destruction by forest insect pests and tree diseases, to protect the forests and watersheds of Montana, to enhance the production of forests, to promote the stability of forest industry, to protect the recreational values of the forest, *and* to independently and through *cooperation* with the federal government and private forest landowners adopt measures to control, suppress and eradicate outbreaks of forest insect pests and tree diseases."

Section 22. Section 28-131, R.C.M. 1947, is renumbered 28-205, and is amended to read as follows:

28-205. **Definitions.** *In this chapter:*

(1) "Forest land" means any land which has enough forest growth, standing or down, to constitute, in the judgment of the *department*, an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(2) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(3) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15."

Section 23. Section 28-133, R.C.M. 1947, is renumbered 28-206, and is amended to read as follows:

"*28-206.* **Forest infestation — zoning — suppression or eradication.** *(1)* Whenever the *department* determines that there exists an infestation of forest insect pests or forest tree diseases injurious to the timber *or* forest growth on forest lands within the state, and that *the* infestation is of such a character as to be a menace to the timber or forest growth of this state, the *department* shall, with the approval of the board of *natural resources and conservation*, declare the existence of a zone of infestation and fix the boundaries so as to definitely describe and identify the zone.

(2) Thereupon, the *department may enter* upon the land within *the* zone of infestation and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated and destroyed in the manner approved by *it. In* order to accomplish the suppression, eradication and destruction of *the* infestation, the *department* may enter into *cooperative agreements* with the federal government *or* other public or private agencies, and with forest landowners, using such funds as *are* made available for *those* purposes."

Section 24. Section 28-134, R.C.M. 1947, is renumbered 28-207, and is amended to read as follows:

"*28-207.* **Abolition of zone of infestation.** *When* the *department* determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, *it* shall abolish the zone of infestation."

Section 25. Section 28-301, R.C.M. 1947, is amended to read as follows:

"28-301. **Montana forest and conservation experiment station established.** There is hereby established in the *university of Montana* forestry school, a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the state board of education."

Section 26. Section 28-303, R.C.M. 1947, is amended to read as follows:

"28-303. **Purposes of station.** It *is* the purpose of this station:

(1) To study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing therefrom.

(2) To study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state.

(3) To determine the relationship between the forest and water conser-

vation and waterflow regulation; the forest and pasturage for domestic livestock and wild life; the forest and recreation and those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands.

(4) To study and develop the establishment of windbreaks, shelter belts and woodlots on the farms of the state that moisture may be conserved thereby for the best production of agricultural crops and forage; for the prevention of soil wastage and erosion; to make the farm home more comfortable and to produce forest material for the use of the farmer and the stockman.

(5) To study the findings of other agencies that the information thus obtained may be used to improve the growth, management and utilization of the timber within the state and to protect it against damage by fire, insects, disease and other harmful agencies.

(6) To collect, to compile and to publish statistics relative to Montana forests and forestry and the influences flowing therefrom; to prepare and publish bulletins and reports, with the necessary illustrations and maps that the information collected by *the* station in forestry and in conservation may be made available for use and to distribute *this* information or material in such other ways as the state board of education may direct.

(7) To collect a library and bibliography of literature pertaining to or useful for the purpose of this act.

(8) To study logging, lumbering and milling operations and other operations dealing with the products of forest soils with special reference to their improvement; to investigate, and make tests of forest products produced or that may be produced within the state that markets may be improved thereby.

(9) To consider such other scientific and economic problems as, in the judgment of the state board of education, are of value to the people of the state.

(10) To *cooperate* with the other departments of the university of Montana, the departments of the state government when mutually beneficial, *and* with private individuals and agencies; and to *cooperate* with the United States government and its branches as a land grant institution, or otherwise, in accordance with their regulations.

(11) To establish such field experiment stations as in the judgment of the state board of education may be necessary. The state board of education *may* accept, for and in behalf of the state of Montana, such gifts of land or other donations as may be made to the state for the purposes of this act."

Section 27. Section 28-404, R.C.M. 1947, is amended to read as follows:

"28-404. **Reduction or management of fire hazard created by cutting timber.** Everyone engaged, or about to engage, in the cutting of any forest product or conducting standing improvement such as, but not limited to, thinning, weeding and pruning, upon private lands within the

state of Montana shall provide for the reduction or management of the fire hazard to the property of others thus created or to be created by entering into a fire hazard reduction agreement as provided in sections 28-408 to 28-412, or by posting a bond to the state of Montana in such form and for such amount as may be prescribed by the *department of natural resources and conservation*; provided, however, that the amount of the bond so prescribed shall not be in excess of the amount which such person would be required to pay under said sections 28-408 to 28-412, and that the bond shall be conditioned upon full and faithful compliance with all requirements under said sections 28-408 to 28-412, and the faithful reduction or management of such fire hazards in the manner prescribed by law. Such bond shall be released upon completion of the work in compliance with the terms of the bond. The *department* shall issue a certificate of compliance with the terms of this section to all persons who have complied therewith."

Section 28. Section 28-405, R.C.M. 1947, is amended to read as follows:

"28-405. **Reduction of slash and forest debris along right of way.** Everyone clearing right of way for any railroad, public highway, public trail, private road, trail, ditch, dyke, pipeline or wire lines, or any other transmission or transportation utility right of way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from such clearing or from the cutting of material for the construction of such public or private utility unless exempted by the *department.*

Hazard reduction, including burning where this method of disposal is used, shall be done as rapidly as cutting or clearing progresses; provided that upon application to the *department* he may grant a permit extending the time within which such burning must be done in compliance with all the provisions of this chapter relating to burning permits during the closed season.

The provisions of the section shall apply to all clearing of rights of way across private land and on behalf of the state, county, highway districts and road districts, whether the work be done by day labor, or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting said work for withholding until it is complete, a sufficient portion of the payment therefor to assure compliance with this act.

Violations of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars *($100)* nor more than one thousand dollars *($1,000).*

In addition to the penalty herein provided the offender may be enjoined, at the instance of the *department* from proceeding with such work until the provisions of this section shall have been complied with; and, upon application of the *department* to any court of competent jurisdiction, a writ of mandate shall issue compelling the offender to fully comply with the provisions thereof."

Section 29. Section 28-406, R.C.M. 1947, is amended to read as follows:

"28-406. **Purchaser will insure compliance, prior to purchase, will transmit withheld money to department — penalty.** The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state of Montana, shall before making such purchase or contract to purchase determine that the persons, firm or corporation engaged, or about to engage, in the cutting of these forest products, has provided for the reduction or management of the fire hazard thus created, as provided in sections 28-404 to 28-412. When the hazard reduction agreement provides that the purchaser of forest products shall withhold moneys to insure faithful compliance with sections 28-404 to 28-412, said purchaser will transmit any moneys which are withheld to the state forester.

Violation of any of the provisions of this section shall be deemed a misdemeanor and be punishable by a fine of not less than one hundred dollars *($100)* nor more than one thousand dollars *($1,000).*"

Section 30. Section 28-407, R.C.M. 1947, is amended to read as follows:

"28-407. **Disposal of slash — injunction against further cutting — disposal at expense of owner — lien and enforcement — orders.** In the event one responsible therefor shall fail, refuse or neglect to properly dispose of slash in accordance with the requirements of sections 28-404 and 28-406, and such person responsible therefor is engaged or is about to engage, either for himself or for another, in cutting timber or other forest products, and thereby creating a fire hazard anywhere within the state, he may be enjoined from cutting such timber and thereby creating a fire hazard until he shall have complied with the provisions of sections 28-404 and 28-406. Such injunction proceedings may be instituted by the *department* as plaintiff and the court may in its discretion grant a temporary injunction. In any such proceedings no bond shall be required of the plaintiff and such proceedings shall be handled with expedition in the district court of the county where the land is located.

If one responsible therefor has for any reason failed to comply with sections 28-404 and 28-406, and has without such compliance cut any forest products and shall fail, refuse, or neglect to obtain compliance for a period of thirty *(30)* days after being notified so to do by the *department*, the *department*, may, if *it* deems it advisable, complete, direct or authorize the disposal of such slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which such fire hazard remains undisposed of as aforesaid.

The cost and expense of such disposal, plus twenty per cent (20%) of the cost and expense of such disposal as a penalty, shall constitute a lien upon the forest products so cut or produced from such land. If payment of the sum demanded be not made to the *department* within ten (10) days of such written demand, the *department* must transfer all papers relative to the unsatisfied demand for payment to the attorney general of the state, who shall bring legal action on behalf of the state to recover the debt.

The *department* shall not file for record any lien against the property

of any person who has been issued a certificate of compliance with sections 28-404 and 28-406, covering such property.

All orders and directions issued by the *department* as required by this section and section 28-404 shall be in writing and made in duplicate, the original of which shall be sent or delivered to the person to receive such orders, permits or directions; one copy shall be filed in the office of the *department.*"

Section 31. Section 28-408, R.C.M. 1947, is amended to read as follows:

"28-408. **Supervision by department.** *(1)* The *department*, under such rules as the board of *natural resources and conservation* may provide, shall supervise the reduction or management of any fire hazard to the property of others created by the cutting of any forest product on private land in the state of Montana.

(2) The reduction or management of fire hazards referred to in this act shall be in keeping with modern and progressive forest practices and more effective fire control and may include or be limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard."

Section 32. Section 28-410, R.C.M. 1947, is amended to read as follows:

"28-410. **Contracts with owners of forest lands.** The *department* is hereby authorized and empowered to enter into agreements with the owners of any forest lands or any operator engaged in operations on lands within the state of Montana whereby slash is created, and under said contract the *department* may assume all responsibility for the reduction or management of any fire hazard; any such contract shall provide the amount to be paid by the owner or operator to the *department* by reason of *its* agreement to assume the reduction or management, of such fire hazard. Said amount shall not exceed two dollars *($2)* for each one thousand (1000) feet log scale, or the equivalent thereof if forest products other than logs are cut."

Section 33. Section 28-411, R.C.M. 1947, is amended to read as follows:

"28-411. **Methods of reducing hazards — contracts with forest protective agencies.** The reduction or management of such fire hazards shall be carried on by the *department* and the state firewardens in keeping with modern and progressive forest practices and more effective fire control and the *department* is hereby authorized to enter into contracts with forest protective agencies, including agencies of the United States of America, for the reduction or management of such fire hazards when in *its* opinion the work can best be accomplished in that manner. The *department*, state firewardens, and recognized forest protective agencies, including any agency of the United States of America, with which the *department* has entered into an agreement for the reduction or management of any fire hazard as herein provided, and any officer or official of such agency, shall not be liable for any damage to the land, product,

improvement, or other things of value of whatsoever nature upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of sections 28-408 to 28-412, when all requisite care and caution has been used and such work is being or has been performed in compliance with the rules provided in section 28-408."

Section 34. Section 28-412, R.C.M. 1947, is amended to read as follows:

"28-412. **Certificate of clearance.** Any owner or operator who has entered into a contract with the *department* for the reduction or management of any fire hazard and upon payment of the contract price in accordance with the terms of said contract and the full compliance with the terms of said contract by such owner or operator, shall be granted a certificate of clearance and be relieved of any and all further liability and responsibility for the removal or reduction of any such fire hazard; provided, however, the *department* may require a cash bond, equivalent to the contract price, and conditioned upon the faithful performance of said contract, be deposited by the owner or operator with the *department.*"

Section 35. Section 46-2301, R.C.M. 1947, is amended to read as follows:

"46-2301. **Grass Conservation Act — cooperation on Taylor Grazing Act.** This act may be cited as the "Grass Conservation Act." Its purpose is to provide for the conservation, protection, restoration, and proper utilization of grass, forage and range resources of the state of Montana, to provide for the incorporation of *cooperative* nonprofit grazing districts, to provide a means of *cooperation* with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate ranch properties as defined herein. *The department of natural resources and conservation shall* assist in carrying out the purposes of this act, act in an advisory capacity with the *department of state lands* and *board of* county commissioners, and supervise and coordinate the formation and operation of districts which may be incorporated under this act."

Section 36. Section 46-2302, R.C.M. 1947, is amended to read as follows:

"46-2302. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "Department" means *the department of natural resources and conservation provided for in Title 82A, chapter 15.*

(2) "State district" means a nonprofit *cooperative* organization incorporated under this act, and its board of directors. "State district" also includes all lands, owned or controlled by the state district or its members.

(3) "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

(4) "Permits" are evidence of grazing privileges granted by state districts.

(5) "Grazing preference" is a right to obtain a grazing permit from a state district. It is attached to dependent commensurate property except as provided in this act.

(6) "Board" means the *board of natural resources and conservation provided for in section 82A-1509, except where the term is used in connection with the board of directors of a state district.*

(7) "Person" means *a* natural person or persons, unincorporated associations, partnerships, corporations and governmental departments or agencies.

(8) "Commensurate property" means land privately owned or controlled which is not range as herein defined.

(9) "Dependent commensurate property" is commensurate property which requires the use of range in connection with it to maintain its proper use, and which produces or whose owner furnishes as part of his past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range, and which has been used in connection with the range for a period of any three *(3)* years or for any two *(2)* consecutive years in the *five (5) year* period immediately preceding June 28, 1934; or in the case of districts organized after March 15, 1945, for a five (5) year period immediately preceding the date of organization of such districts.

(10) "Animal unit" means one *(1)* cow, one *(1)* horse, or five *(5)* sheep, six *(6)* months old or over.

(11) "Assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in paragraph 6, section 46-2312. "Assessment" does not include fees."

Section 37. Section 46-2307, R.C.M. 1947, is amended to read as follows:

"46-2307. **Powers of department and board — state districts.** *(1) (a) The department may* prepare and standardize various forms to be used by the state districts, *and* supervise or regulate the organization and operation of state districts. *If a* state district or the directors of *a* state district fail to comply with an order of the *department, the board* may order a hearing thereon within the district or county and cite *the* directors of *the* district to appear before *the* board; if upon *the* hearing it appears that *the directors* refuse to perform the duties of their office as herein defined and as set forth in the articles of incorporation and the bylaws of *the* association, or refuse to comply with a lawful order of *the department*, the directors may be summarily removed *by the board* from office, and thereupon *the* district shall elect new officers. During *the* period until *the* election the *department may* operate and manage the affairs of *the* state dis-

trict. The expense of operating and managing the affairs of a noncomplying state district shall be paid by *the* noncomplying state district before it *may* be reinstated.

(b) If a state district *ceases* to function and it appears to the *board* that the reinstatement and future operation of *the* district is no longer feasible, beneficial and desirable to those who own or control more than fifty per cent (50%) of the lands included in *the* district, the *board, after a hearing thereon, and,* upon thirty (30) days' notice in writing, published for two (2) consecutive weeks in a newspaper of general circulation in or nearest to *the* district, may *dissolve the* district. A notice of *the* dissolution shall be filed by the *department* with the secretary of state and the clerk and recorder of the county or counties in which *the* district is located.

(2) The department may:

(a) Issue citations directed to any person requiring his attendance before the *department or the board,* and subpoena witnesses and pay such expenses as would be allowed in a court action.

(b) Require an officer or director of a state district to submit records of *the* state district to the *department* for the purpose of aiding *an* investigation conducted by *the department.*

(c) Hold hearings on any matters affecting the *department.*

(d) Require state districts to furnish itemized financial reports annually.

(e) Cooperate and enter into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency, in order to promote the purposes of this act."

Section 38. Section 46-2308, R.C.M. 1947, is amended to read as follows:

"46-2308. **Appeals from decisions of state district to board — from board to district court.** *(1)* Notice of *a* decision of *a* state district shall be given in writing by the secretary of *the* state district to the interested parties or their attorneys by registered mail at the address as shown on the records of *the* district.

(2) A person affected by the decision of *a* state district may appeal therefrom to the *board* which shall hear and decide all *those* appeals. An appeal from the decision of *the* district to the *board* may be taken by filing written notice of *the* appeal with the *department* and by filing a copy of *the* notice of appeal with the secretary of *the* district and by serving a copy of *the* notice of appeal by registered mail upon *any* interested parties who have appeared, or their attorneys, within sixty (60) days after receiving written notice of the decision of the district. The appellant shall also file with the *department* proof by affidavit of *the* filing and service of *the* notice of appeal. The appeal to the *board* shall be taken and review thereof had upon the record of *any* hearing conducted and considered by the state district; however, the *board* may, at its discretion, and for good cause shown, permit additional testimony to be submitted.

Any person who chooses to become a member of any state district is bound by all the provisions of the Grass Conservation Act and is limited to the statutory remedies therein contained and no court shall have jurisdiction to consider any right claimed under such act excepting only by judicial review from the final decision of the commission as herein provided.

(3) The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) applies to this act."

Section 39. Section 46-2309, R.C.M. 1947, is amended to read as follows:

"46-2309. **Incorporation of state districts.** *If* three *(3)* or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the *department* together with a plat showing the proposed boundaries of the area. *The* statement shall set forth the name of the proposed state district; the county or counties in which *the* proposed state district is located; and the names and addresses of all operators of land and livestock units within *the* area. The *department* may require any additional information it *considers* necessary. On receipt of *the* statement and plat and *any* additional information, the *department* shall fix *a* time and place of a hearing for approval within the district or county, which *may* not be less than thirty *(30)* days or more than sixty *(60)* days after receipt of *the* statement. The persons deciding to incorporate *the* state grazing district shall then cause notice of *the* hearing to be given by publishing a notice prescribed by the *department* once a week for two *(2)* consecutive weeks, the first publication to be at least thirty *(30)* days prior to the date of hearing, in a newspaper of general circulation in *the* area. The *department,* for and on behalf of the *board,* shall hear evidence offered in support of, or in opposition to, the creation of *the* state district, and shall make a full inquiry into the advisability of *its* creation; the record taken upon the hearing, together with the report of the *department,* shall be submitted to the *board.* If the creation of *the* state district *appears* feasible, beneficial and desirable to those who own or control more than fifty per cent *(50%)* of the lands to be included in *the* district, the *board* may issue a certificate of approval."

Section 40. Section 46-2310, R.C.M. 1947, is amended to read as follows:

"46-2310. **Articles of incorporation, contents.** Upon the issuance of the certificate of approval, three *(3)* or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the *office* of the secretary of state without payment of fees; *the* articles *shall* be accompanied by the certificate of approval and signed, sealed, and acknowledged. *The* articles, as prescribed by the *department,* shall substantially state the following:

(1) The name of the state district, the last four *(4)* words of which shall be "*cooperative* state grazing district."

(2) The county or counties in which *the* state district is located, and the place where the principal office and business of the state district will be conducted.

(3) The membership fee for each member of the state district which *may* not be more than five dollars *($5)*.

(4) The term for which *the* state district is incorporated, which *may* not exceed forty *(40)* years.

(5) The names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district.

(6) The powers of the state district, which *may* not be inconsistent with this act.

(7) The officers of the state district, their principal duties, and the principal duties of the board of directors.

(8) The purpose for which the state district is incorporated. If the articles substantially comply with the requirements set forth *in this section* and are accompanied by the certificate of approval, the secretary of state shall issue to *the* state district a certificate of incorporation. All amendments to articles of incorporation shall also be filed by the secretary of state without charge."

Section 41. Section 46-2311, R.C.M. 1947, is amended to read as follows:

"46-2311. **Map or plat of district to be filed.** *A state district* shall, upon completion of *its* organization, file with the county clerk of each county in which *its* lands lie, a map or plat of the external boundaries of *the* state district and a copy of *its* articles of incorporation. *If* the boundaries of a state district *are* changed, and *the changes are* approved by the *board after a hearing thereon before the department*, the state district shall file with the county clerk or clerks a map or plat indicating *the* changed boundaries. *If* the articles of incorporation *are* amended, *the* amendment shall be filed with *the* county clerk or clerks. *A* person herding or in control of livestock in the approximate vicinity of *a* state *district shall* ascertain the boundary lines *of the district.*"

Section 42. Section 46-2312, R.C.M. 1947, is amended to read as follows:

"46-2312. **Powers of state districts.** *A* state district *may*:

(1) Purchase or market livestock and livestock products, *and* purchase supplies and equipment. *These* supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) Sue or be sued in its corporate name.

(3) Acquire forage producing lands by lease, purchase, *cooperative* agreements, or otherwise, either from the United States, the state of Montana, county or counties in which *the* lands are located, or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale or otherwise.

(4) Manage and control the use of its range. This power *includes* the right to determine the size of preferences and permit according to a fixed method which shall be stated in the bylaws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range, and may be subject to reservations, regulations and limitations under the terms of agreements between the state district and any agency of the United States. *The state district may also* allot range to members or nonmembers, and decrease or increase the size of permits if the range carrying capacity changes.

(5) Acquire or construct fences, reservoirs, or other facilities for the care of livestock, and lease or purchase lands for such purposes.

(6) Fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses *and* fix and determine *the amount of* assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase, or for the purpose of constructing improvements in *the* state district.

(7) Specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district.

(8) Employ and discharge employees, riders, and other persons necessary to properly manage the state district.

(9) Set up and maintain a reasonable reserve fund.

(10) Borrow money, and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least eighty per cent *(80%)* of the permittee members of the state district consent in writing to *the* borrowing and *the* borrowing has been approved by the *department. This subsection does not confer* power upon *a* state district to mortgage the property of the individual members of the district.

(11) Change the boundaries of a district, merge with another state district organized under this act, or subdivide.

(a) *A* merger *may not* be made unless consented to by a majority of the members of each merging state district and approved by the *board after a hearing thereon before the department.*

(b) *A* subdivision *may not* be made unless consented to by a majority of the members in the affected area and approved by the *board after a hearing thereon before the department.*

(12) Regulate the driving of stock over, across, into, or through the range, and collect fees therefor. *A state district may* impose sanitary provisions, regulations and practices.

(13) Undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and

enter into *cooperative* agreements with the federal government or any other *person* for *the* reseeding or conservation and improvement practices."

Section 43. Section 46-2313, R.C.M. 1947, is amended to read as follows:

"46-2313. **Powers and duties of directors.** The directors of the state district shall manage and exercise the powers of *the* state district subject to its bylaws and to the regulation of the *department* as provided in this act."

Section 44. Section 46-2314, R.C.M. 1947, is amended to read as follows:

"46-2314. **Membership in district.** *(1)* Membership in the district is limited to persons engaged in the livestock business who own or lease forage producing lands within or near the district, except that the agent of *a* person entitled to membership in the district may become a member in place of his principal. If *an* agent becomes a member his qualifications for membership and his obligations to and the privileges in the district shall be measured by those his principal would have had if he had elected to become a member. *An* agent and his principal *may not* both be of the district unless *the* agent has individual qualifications for membership which are separable from and independent of those of his principal. Permittee members only *are* entitled to vote on all issues submitted to a vote of the members. *A permittee* member *has only* one *(1)* vote. Voting by proxy *may* not be permitted. All members who possessed preferential grazing permits during the preceding grazing season or who possess such a permit at the time of voting shall be designated as permittee members.

(2) When *a* member *disposes* of a part of the lands or leases owned by him so that another *person becomes* the owner of *the* lands or leases and *acquires* the right to membership, then the rights and interest involved shall be determined by the directors of the state district with the approval of the *department.*

(3) Preferences or rights under this act through the creation of the district or the issuance of permits or preferences are statutory and *do* not create any vested right, title, interest or estate in or to the lands owned or controlled by the district excepting as herein provided."

Section 45. Section 46-2315, R.C.M. 1947, is amended to read as follows:

"46-2315. **Bylaws.** *A* state district incorporated under this act shall within sixty (60) days after its incorporation adopt bylaws approved by the *department. The* bylaws may be amended or revised with the approval of the *department."*

Section 46. Section 46-2316, R.C.M. 1947, is amended to read as follows:

"46-2316. **District must lease available state land.** *State* land situated within the boundaries of *a* grazing district created *under* this act, not otherwise disposed of by the *department of state lands,* must be leased by *the* grazing district at a reasonable rental, when offered for lease to

the officers of *the* grazing district by *that department;* however, the officers of *the* grazing district may appear or submit evidence in writing before the *department of state lands* and show reason and cause for a change in *the* rental. If *there is cause,* the *department of state lands* may *reappraise* the land in question. *The department of natural resources and conservation shall* require that all state districts comply with this section."

Section 47. Section 46-2317, R.C.M. 1947, is amended to read as follows:

"46-2317. **Department to advise department of state lands and county commissioners.** The *department* may act in an advisory capacity to the *department of state lands* and *boards* of county commissioners for the purpose of working out uniform plans for the use of lands lying within or without the boundaries of *state* districts, in conformity with recognized conservation and stabilization policies."

Section 48. Section 46-2318, R.C.M. 1947, is amended to read as follows:

"46-2318. **Amending articles of incorporation.** *(1) A state* district may amend its articles of incorporation by a two-thirds *(⅔)* vote of all members present at any regular or special meeting of its members and the approval of the *department;* the only notice of *the* meeting which is necessary is the notice of meetings of members as required by the bylaws of *the* district. *The* amended articles of incorporation and bylaws shall be submitted to the *department* for approval. Upon approval, the *department* shall issue *a certificate* of approval. *The* amended articles of incorporation shall be filed by the secretary of state without charge, but *may* not be filed unless accompanied by *the* certificate of approval.

(2) Upon the filing of *the* amended articles with the secretary of state and the proper county clerk or clerks, *the* district *possesses* the same powers and shall be subject to the same obligations as if incorporated under this act."

Section 49. Section 46-2322, R.C.M. 1947, is amended to read as follows:

"46-2322. **Grazing preferences appurtenant to dependent commensurate property and commensurate property and method of transferring preferences to other lands.** *(1)* Grazing preferences run with and *are* appurtenant to the dependent commensurate and commensurate property upon which they are based. They *are* not subject to devise, bequest, attachment, execution, lease, sale, exchange, transfer, pledge, mortgage, or other process, or transaction, except as provided in this section or in the bylaws of a state district. Upon application by a permittee, the state district with the approval of the *department* may allow a preference based on ownership or control of dependent commensurate or commensurate property to be transferred to other property of sufficient commensurability; *however,* in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by *the* applicant, the applicant must have had control and use of the dependent commensurate or commensurate property and the preference appurtenant thereto for five (5) consecutive years and must have established and main-

tained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer. *In addition, the* transfer *may* not interfere with the stability of livestock operations or with proper range management and *may* not affect adversely the established local economy. *A* transfer *may not* be allowed without the written consent of the owner or owners and any encumbrances of the dependent commensurate or commensurate property from which the transfer is to be made, and *a* transfer *is* not effective until approved by the *department. This* section *does* not apply to trespass violations.

(2) When *an* application *for transfer* is presented to the board *of directors of a state district,* the secretary upon the direction of *that* board shall give notice thereof, setting forth in general *the* application and the time and place of *a* hearing thereon as fixed by the board. *A* copy of *the* notice shall be given or mailed to the applicant and shall be published for at least once a week for two *(2)* successive weeks prior to *the hearing* in a newspaper published or generally circulated within the district, and *the* notice shall also be posted for at least two *(2)* full weeks prior to *the hearing* in three (3) public places within *the* district. *The* date of hearing must be at least fifteen (15) days from the first publication of *the* notice. *At the* hearing the directors shall fully hear and determine *the* application and *any* objections thereto.

(3) Upon the allowance of a transfer under this section, the property from which the transfer is made *loses* its grazing preference to the extent of the preference transferred.

(4) All expenses involved under the application shall be borne by the applicant.

(5) When the land to which a preference is attached *changes* its control or ownership *the* preference *changes* with the land, *and* the person to which *the* control or ownership changes shall secure a nonuse permit or shall pay the usual grazing fees. If *the* person fails to secure *a* nonuse permit or refuses to pay *the* grazing fees, the preferences may be revoked by the state district. If *a* person controls but does not own land and does not secure a nonuse permit and refuses to pay grazing fees, the state district shall notify the owner of *the* land by registered mail that the preference attached to *the* land will be revoked unless *the owner pays* the usual grazing fees to the state district within sixty (60) days from the time of receipt of *the* notice. The state district may revoke *the* preference if the owner or mortgagor does not pay *the* fees or secure a nonuse permit.

(6) If *a* permittee fails to pay grazing fees or assessments levied by the state district, or fails to obtain a nonuse permit or violates any of the rules and regulations of the state district, the state district may notify *the* permittee and owner of *the* land by registered mail that the preference attached to *the* land will be revoked unless *the* grazing fees or assessments are paid or *the* permittee ceases to violate the rules and regulations laid down by the district within sixty (60) days from the time of receipt of *the* notice. The state district may revoke *the* preference if the permittee or owner fails to pay *the* charges or *comply.*

(7) When a preference is revoked, it *is* detached from the dependent

commensurate or commensurate property to which it was formerly appurtenant, *and it* immediately *shifts* to the state district. The state district may then allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws.

(8) In all cases where notices are given permittees under this act by registered mail and addressed to the post-office address of *the* permittee as shown by the records of *the state* district, *the* notices shall be *considered* received by the permittee when deposited in the United States post office by the district or by the *department."*

Section 50. Section 46-2323, R.C.M. 1947, is amended to read as follows:

"46-2323. **Subsequent lessees to compensate district for range improvements.** Subsequent lessees or owners of land shall compensate a state district for the value of range improvements constructed with the consent of the owner, upon lands leased by the state district. *The* value shall be the value at the expiration date of the lease. *If* the owner and the state district cannot agree as to *the* value, the state district may either remove or abandon *the* improvement. *If* the subsequent lessee and the state district cannot agree as to *the* value, it shall be fixed by the *department."*

Section 51. Section 46-2325, R.C.M. 1947, is amended to read as follows:

"46-2325. **Dissolution of district.** A state district with the written consent of three-fourths *(¾)* of its permittee members may at any time request the *board of natural resources and conservation to dissolve* the state district. When *a hearing thereon has been held before the department and the board's* consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution shall first be made *with the approval of the department* to creditors up to the amount of their claims. Distribution shall then be made *with the approval of the department* to permittee members upon the basis of their proportionate interest in *the* assets. If assets must be liquidated, the directors shall offer *them* for sale at public auction after publication of a notice of *the* sale once a week for two *(2)* successive weeks in a newspaper of general circulation within the state district. A final report of all dissolution proceedings shall be made to the *department* by the directors. Upon the approval of *the* report by the *department, the board* shall order *the* state district dissolved."

Section 52. Section 46-2331, R.C.M. 1947, is amended to read as follows:

"46-2331. **Fees may be imposed by department against districts.** The *department may* impose fees against the several state grazing districts of the state in an amount not in excess of ten cents *($.10)* per animal unit, based upon the number of animal units per year for which the district grants permits, to defray expenses *incurred* by the *department in carrying out its powers and duties under this act.* These fees shall be held in the earmarked revenue fund, to be expended by order and direction of the *department* for the administration of the *department's functions*

under this act. If *a* state district fails or refuses to pay *the* fee on or before the first day of October of each year, and after *the* district *is* provided with a full report from the *department* of all moneys collected and expended by it for its fiscal year next preceding that date, the *department may* compel and levy collection and payment by writ of mandate or other appropriate remedy against *the* state district."

Section 53. Section 46-2332, R.C.M. 1947, is amended to read as follows:

"46-2332. **Range for wild game animals.** In each state district a sufficient carrying capacity of range *shall* be reserved for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district. The *department* may act in an advisory capacity to the *department of* fish and game in the protection of wildlife within the boundaries of all *state* districts. The *department* shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed."

Section 54. Section 60-124, R.C.M. 1947, is renumbered 60-127.1, and is amended to read as follows:

"*60-127.1.* **Waste of oil and gas prohibited.** Waste of oil and gas or either of them as waste is defined in this *chapter*, is prohibited."

Section 55. Section 60-126, R.C.M. 1947, is amended to read as follows:

"60-126. **Definitions.** As used in this *chapter*, unless the context *requires* otherwise:

(1) "Waste" means: (1) physical waste, as that term is generally understood in the oil and gas industry; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and, (4) the inefficient storing of oil or gas. *The* production of oil or gas from any pool or by any well to the full extent that *the* well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the *board, is* not waste within the meaning of this definition.

(2) "Board" means the *board of* oil and gas conservation *provided for in section 82A-1508.*

(3) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(4) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(5) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil *in subsection (4) of this section.*

(6) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this *chapter.*

(7) "Field" means the general area underlaid by one *(1)* or more pools.

(8) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and *the term includes* all persons holding such authority by or through him.

Nothing herein contained shall be construed to conflict with subsection *(4)* of section 81-1702, granting *the* state board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

(9) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(10) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15."

Section 56. Section 60-127, R.C.M. 1947, is amended to read as follows:

"60-127. **Powers and duties of board.** *(1)* The *board shall* make such investigations as it *considers* proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the *board* under the authority granted by this *chapter* with respect thereto.

(2) Subject to the administrative control of the department under section 82A-108, the board shall:

(a) Require: (i) identification of ownership of oil or gas wells, producing properties and tanks; *(ii)* the making and filing of acceptable well logs, reports on well locations, and the filing of directional surveys, if made, however, logs of exploratory or wildcat wells need not be filed for a period of six (6) months following completion of *those* wells; *(iii)* the drilling, casing, producing and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires, and the pollution of fresh water supplies by oil, gas, salt, or brackish water; *(iv)* the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well; *(v)* proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof; *and (vi)* that every person who produces, transports or stores oil or gas in this state shall make available within this state for a period of five (5) years complete and accurate records of the quantities thereof, which records shall be available for examination by the *board* or its *employees* at all reasonable

times, and that *that* person file with the *board* such reports as it may prescribe with respect to quantities, transportations, and storages of *the* oil or gas.

(b) For the purpose of preventing waste, *(i)* regulate the drilling, producing and plugging of wells, the shooting and chemical treatment of wells, the spacing of wells, operations voluntarily entered into to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations, and, *(ii)* fix, upon application made by any interested person after hearing, efficient gas-oil and water-oil ratios for any particular well or wells.

(c) Regulate the disposal of salt water and oil field wastes.

(d) Classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this *chapter.*

(e) Adopt and enforce rules and orders to effectuate the purposes and the intent of this *chapter.*

(3) The *board* shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wild cat wells," and make such orders as in its judgment *are* required to protect *those* wells, and provide that stripper wells may be produced to capacity if it is *considered* necessary in the interest of conservation to do *so.*

(4) With respect to any pool from which gas was being produced by a gas well on or prior to *April 1, 1953,* this *chapter does not* authorize the *board* to limit or restrain the rate (daily or otherwise) of production of gas from *that* pool by any well then or *thereafter* drilled and producing from *that* pool to less than the rate at which *the* well can be produced without adversely affecting the quantity of gas ultimately recoverable by *the* well."

Section 57. Section 60-128, R.C.M. 1947, is amended to read as follows:

"60-128. **Notice of intention to drill.** It *is* unlawful to commence the drilling of a well for oil or gas without first *filing with* the *board* written notice of intention to drill, and obtaining a drilling permit as provided *in section 60-145(4).*"

Section 58. Section 60-129, R.C.M. 1947, is amended to read as follows:

"60-129. **Well spacing units — orders.** *(1)* To prevent or to assist in preventing waste of oil or gas prohibited by this *chapter,* the *board,* upon its own motion or upon application of *an* interested person, after hearing, may by order establish well spacing units for a pool, as to oil wells or as to gas wells or both, except in those pools which, prior to *April 1, 1953,* have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. Spacing units when established shall in so far as possible be of uniform size and shape for the entire pool.

(2) The size and the shape of spacing units *shall* be such as will result in the efficient and economic development of the pool as a whole, and the size shall be the area that can be efficiently drained by one *(1)* well.

(3) Subject to this *chapter,* the order establishing spacing units shall direct that no more than one (1) well *may* be drilled and produced from the common source of supply on any spacing unit, and that the well shall be drilled at a location authorized by the order, with such exception as may be reasonably necessary where it is shown, upon application, notice, and hearing, and the *board* finds, that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit, or, for some other reason, the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable.

(4) An order establishing spacing units for a pool shall cover all lands then determined or then believed to be underlaid by *the* pool and may be modified after notice and hearing by the *board* from time to time to include additional areas subsequently determined to be underlaid by *the* pool. When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after notice and hearing by the *board* to increase or decrease the size of spacing units in the pool, or to permit the drilling of additional wells on a reasonably uniform plan in the pool."

Section 59. Section 60-130, R.C.M. 1947, is amended to read as follows:

"60-130. **Pooling of interest within spacing unit — voluntary or on order of board after hearing — contents of order.** *(1)* When two (2) or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the persons owning *those* interests may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, within the spacing unit, the *board,* upon the application of *an* interested person, may enter an order pooling all interests in the spacing unit for the development and operation thereof. *The* pooling order shall be made after hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his just and equitable share of the oil or gas produced and saved from *the* spacing unit. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be *considered,* for all purposes, the conduct of *the* operations upon each separately owned tract in the spacing unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be *considered* for all purposes to have been produced from *the* tract by a well drilled thereon.

(2) The pooling order shall *provide* for the drilling and operating of a well on the spacing unit, and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling and storage. As to each owner who refuses to pay his share of the costs of drilling and operating the well, the order shall provide for payment of his share

of the cost out of, and only out of, production from the well allocable to his interest in the spacing unit, excluding royalty or other interest not obligated to pay any part of the cost thereof. *If a* dispute *arises* as to *the* cost, the *board by order* shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well *are*, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of *the* costs out of *the* production and thereafter all of the owners in *the* spacing unit *are* entitled to receive their respective shares of the production of *the* well as their interest may appear after deducting their respective shares of current operating costs."

Section 60. Section 60-131, R.C.M. 1947, is amended to read as follows:

"60-131. **Agreements for development and operation of pool — not in violation of state antitrust laws when approved by board.** An agreement for the unit or *cooperative* development and operation of a field or pool or any part of either, or for conducting repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, or any other method of unit or *cooperative* operation, including water flooding, is authorized and may be performed. Such an agreement *does* not violate any of the statutes of this state relating to trusts, monopolies or contracts and combinations in restraint of trade if the agreement is approved by the *board* as being in the public interest and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas."

Section 61. Section 60-131.1, R.C.M. 1947, is amended to read as follows:

"60-131.1. **Operation of pool as unit — board to hold hearing — notice.** *(1)* The *board*, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one *(1)* or more pools or parts thereof in a field, for pressure maintenance or secondary recovery purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least sixty (60) days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at *that person's* last known address, of *the* applicant's intention to make *the* application. At the same time producers *shall* be furnished with a plan of unit operations. Upon written request of *an* operator of *a* lease which is in whole or in part within the confines of the proposed delineated area, *the* applicant *shall* furnish *the* operator with copies of any exhibits to be submitted to the *board* at the time of hearing."

Section 62. Section 60-131.2, R.C.M. 1947, is amended to read as follows:

"60-131.2. **Board order — criteria.** The *board* shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at *the* hearing, that:

(1) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas;

(2) The value of the estimated additional recovery of oil or gas less royalties or, as to gas pools only, the value of the economies to be effected, exceeds the estimated additional cost incident to conducting such operations; and

(3) The full areal extent of *the* pool or pools or part thereof has been reasonably defined and determined by drilling operations."

Section 63. Section 60-131.3, R.C.M. 1947, is amended to read as follows:

"60-131.3. **Terms and conditions of order — requirements.** The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. *If* the unit is formed solely for production of gas, *a* spacing unit on which is located a well producing or capable of producing gas on *March 1, 1971, may not* be included in the unit area without the written consent of the majority in interest of the working interest owners of *the* spacing unit and well.

(2) A statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement.

(3) A plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. *A* plan *may not* be approved by the *board* until *it* has considered the relative value that *the* share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering *this* relative value, the *board* shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%)

for *the* service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, *the* owners' share of production. *The* recovery shall be as follows:

(a) (1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of *the* owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools or a result of the natural energy therein and without the introduction of a secondary recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of *the* owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of *the* owners' share of production.

(6) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of *the* owner.

(7) A provision whereby the unit operator, after having operated for a minimum period of two *(2)* years, can be challenged by any other owner in the unit, and *the* challenging owner may succeed to the unit operations upon a showing that: (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved *the* challenging owner becoming unit operator; and, (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of *the* conditions of operations.

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) Such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights."

Section 64. Section 60-131.4, R.C.M. 1947, is amended to read as follows:

"60-131.4. **Plan for unit operations — approval by those paying costs required — conditions for approval.** *An* order of the *board* providing for unit operations *may not* become effective unless and until the plan for unit operations prescribed by the *board* has been approved in writing by those persons who, under the *board's* order, will be required to pay at least eighty per cent (80%) of the costs of the unit operations, and also by the persons owning at least eighty per cent (80%) of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the *board* has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; however, if one *(1)* owner who is obligated to pay costs of the unit operation owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that owner and at least one *(1)* other such owner *is* required, and if one *(1)* person entitled to production or proceeds thereof that will be credited to interests which are free of costs, owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that person and at least one *(1)* other such person *is* required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the *board* shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of six (6) months from the date on which the order providing for unit operations is made, *the board shall revoke the* order unless for good cause shown the *board* extends *the* time."

Section 65. Section 60-131.5, R.C.M. 1947, is amended to read as follows:

"60-131.5. **Amendment of board order — conditions.** An order providing for unit operations may be amended by an order made by the *board* in the same manner and subject to the same conditions and notice as an original order providing for unit operations, *however,* (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by the persons owning interest which are free of costs, such as royalties, overriding royalties and production payments, *is* not required, and (b) *an* order of amendment *may not* change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in *the* tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in *the* tract."

Section 66. Section 60-131.6, R.C.M. 1947, is amended to read as follows:

"60-131.6. **Units established by previous order may be included — manner of inclusion.** The *board*, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the *board* made prior to *February 13, 1969. The* order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in *the* previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by *the* order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations *is* not liable for any unit operating costs incurred prior to *the* person's entry in the unit. At the time *the* interest is included in the unit, an equipment inventory *shall* be made in order to charge *the* newly committed interest with its propor-

tionate share of capital investment at its then value. An oil-in-storage inventory *shall* be taken immediately prior to adding the newly committed interest."

Section 67. Section 60-131.8, R.C.M. 1947, is amended to read as follows:

"60-131.8. **Presumptions — compliance with board order constitutes fulfillment of lease or contract obligations.** All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area, shall be *considered* for all purposes the conduct of *those* operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be *considered*, for all purposes, to have been actually produced from *the* tract by a well drilled thereon. Operations conducted pursuant to an order of the *board* providing for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that *the* obligations cannot be performed because of the order of the board."

Section 68. Section 60-131.10, R.C.M. 1947, is amended to read as follows:

"60-131.10. **Contract relating to tract not terminated by board order.** *A* division order or other contract relating to the sale or purchase or production from a tract *may not* be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to *the* tract until terminated in accordance with the provisions thereof."

Section 69. Section 60-131.11, R.C.M. 1947, is amended to read as follows:

"60-131.11. **Title to oil and gas rights not affected by board order — allocation of property.** Except to the extent that the parties affected so agree, *an* order providing for unit operations *does not* result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of *those* owners in the proportion that the expenses of unit operations are charged."

Section 70. Section 60-131.12, R.C.M. 1947, is amended to read as follows:

"60-131.12. **Trade not restrained by unit operations.** The formation of a unit as provided *in sections 60-131.1 through 60-131.13* and the operation of the unit under order of the *board* shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in restraint of trade."

Section 71. Section 60-132, R.C.M. 1947, is amended to read as follows:

"60-132. **Administrative Procedures Act — orders — notice.** *(1) The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) applies to this chapter.*

(2) An order, or amendment thereof, except in an emergency, *may not* be made by the *board* without a public hearing upon at least ten (10) days' notice. The public hearing shall be held at such time and place as may be prescribed by the *board*, and any interested person *is* entitled to be heard.

(3) When an emergency requiring immediate action is found to exist, the *board may* issue an emergency order without advance notice or hearing, which shall be effective upon promulgation. *An* emergency order *may not* remain *in effect* more than fifteen (15) days.

(4) If notice is required by the chapter and the Montana Administrative Procedure Act does not apply, the notice shall be made by publication in one *(1)* or more issues of a newspaper in general circulation in *Helena* and a newspaper of general circulation in the county where the land or some part thereon is situated, and *the board* may also cause publication to be made in a trade journal or bulletin *of* general circulation in the oil and gas industry in the state.

(5) Proof of service by publication *under subsection (4)* shall be made by the affidavit of the printer or publisher of the newspaper, trade journal, or bulletin in which the notice is published, or by a foreman or principal clerk of *the* newspaper, bulletin or trade journal. *(6)* Except as *provided* otherwise in this *chapter*, the *board* may act upon its own motion, or upon the petition of *an* interested person. On the filing of a petition concerning *a* matter within the jurisdiction of the *board*, the *board* shall promptly fix a date for a hearing thereon, and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The *board* shall enter its order within thirty (30) days after the hearing."

Section 72. Section 60-133, R.C.M. 1947, is amended to read as follows:

"60-133. **Subpoena power of board — chapter does not abrogate civil actions — enforcement of chapter when board fails to enjoin violations.** *(1) If the Montana Administrative Procedure Act does not apply, the board may* subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. *Witnesses subpoenaed under this subsection* shall be paid the same per diem and mileage as is provided to be paid to witnesses attending the district courts of this state.

(2) This chapter, a suit by or against the *board, a* violation charged or asserted against *a* person under *this chapter*, or *a* rule or order issued *under this chapter, does not* impair, abridge, or delay *a* cause of action for damages or other civil remedy, which *a* person may have or assert against *a* person violating this *chapter*, or *a* rule or order issued *under it. A* person so aggrieved by the violation may sue for and recover such damages or relief as he otherwise may be entitled to receive. If the *board fails* to bring suit to enjoin a violation or threatened violation of this *chapter*, or *a* rule or order of the *board* within ten (10) days after receipt

of written request to do so by *a* person who is or will be adversely affected by *the* violation, the person making *the* request may bring *the* suit in his own behalf to restrain *the* violation or threatened violation in *a* court in which the *board* might have brought suit. The *board* shall be made a party defendant in *the* suit in addition to the person violating or threatening to violate this *chapter*, or a rule or order of the *board*, and the action shall proceed and injunctive relief may be granted without bond in the same manner as if suit had been brought by the *board*.

(3) If a person *fails or refuses* to comply with the subpoena issued by the *board* or *if a* witness *refuses* to testify as to any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the *board*, may issue a warrant of attachment for *the* person and if after hearing the court finds his failure or refusal to be unjustified, compel him to comply with *the* subpoena, and to attend before the *board* and produce any subpoenaed records, books, and documents for examination, and to give his testimony. *The* court *may* punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein."

Section 73. Section 60-134, R.C.M. 1947, is amended to read as follows:

"60-134. **Rehearing.** *A* person adversely affected by *a* rule or order of the *board* may within twenty (20) days after its effective date apply to the *board* in writing for a rehearing. The application for rehearing shall be acted upon within ten (10) days after its filing, and if granted, the rehearing shall be held without undue delay."

Section 74. Section 60-135, R.C.M. 1947, is amended to read as follows:

"60-135. **Court review of order of board by suit for injunction — trial de novo — temporary restraining order, when allowed, bond — appeals.** *(1)* Any interested person adversely affected by any provision of this *chapter,* or by any rule or order *adopted* by the *board* hereunder, or by any act done or threatened thereunder, may obtain court review and seek relief by a suit for an injunction against the *board* as defendant, which suit may be instituted in the district court of the county where the *board* keeps its principal office, or in the district court of any county wherein the land involved or any part thereof is situated. The term "interested person," as used herein, shall be interpreted broadly and liberally, especially where the suit involves the right to drill a well, or involves some other act which clearly affects the plaintiff even though the effect *is* indirect; and if the act complained of involves a general order for a pool, or the right to drill a well therein, a person who owns or has an interest in a well in *the* pool, which well is capable of producing oil or gas, shall be considered to be, prima facie, an interested person. *The* suit shall be given a preferential setting, and shall be tried de novo and disposed of as an ordinary civil suit, and not upon the record of any hearing before the *board*. The statute, rule, *order*, or decision involved in *the* suit shall be prima facie valid; however, the finding of fact, actual or presumed, made by the *board* in support of the rule, order, or decision involved in *the* suit *is* not binding on the court though supported by evi-

dence introduced at a hearing before the *board*. The court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any *board* action. The court shall*:*

(a) compel *board* action unlawfully withheld or unreasonably delayed; and (b) hold unlawful and set aside *board* action, findings, and conclusions found to be*:*

(1) arbitrary, unreasonable, capricious, and abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unwarranted by the facts.

The court shall consider all the evidence, shall pass on the credibility of witnesses and the weight to be given their testimony, and shall resolve such fact issues as may be necessary for decision in the case.

(2) A temporary restraining order or temporary injunction of any kind *may not* be granted against the *board* and its members or against the attorney general, or against *an* employee of the *board*, restraining the *board* and its members, or employees, or the attorney general, from enforcing this *chapter*, or any rule or order made thereunder, until it *is* shown to the satisfaction of the court that the act done or threatened is probably without sanction of the law or that the provisions of this *chapter*, or the rule or order complained of is probably invalid or unreasonable, and that, if enforced against the complaining party, will probably cause an irreparable injury. With respect to *an* order or decree granting temporary injunctive relief, the nature and extent of the probable invalidity of the statute, or of any provision of this *chapter*, or of a rule or order thereunder involved in *the* suit, must be recited in the order or decree granting the temporary relief, as well as a clear statement of the probable damage relied upon by the court as justifying temporary injunctive relief.

(3) A temporary restraining order or temporary injunction of any kind against the *board* or its members, or its employees, or the attorney general, *may not be* effective until the plaintiff *executes* a bond with sufficient sureties in such amount and upon such conditions as the court *directs*. The bond shall be made payable to the state of Montana, shall be approved by the judge of the court, and shall be for the use and benefit of all persons who may be injured by the acts done under the protection of the temporary restraining order or temporary injunction. *A* person claiming injury must bring suit within six (6) months after the date of the final determination of the validity, in whole or in part of the provisions of the *chapter* or the rule or order, the enforcement of which was enjoined; otherwise the right to bring such suit *is* forever barred.

(4) An appeal to the supreme court may be taken from any final judgment, decree or order in *the* action, as provided in *the Rules of Appellate Civil Procedure* of Title 93, *R.C.M. 1947.*"

Section 75. Section 60-136, R.C.M. 1947, is amended to read as follows:

"60-136. **Enjoining violations of chapter.** Whenever it appears that *a* person is violating or threatening to violate this *chapter*, or *a* rule or order of the *board*, the *board* shall bring suit against *that* person in the district court of any county where the violation occurs or is threatened, to restrain *the* person from continuing *the* violation or from carrying out the threat of violation. In *the* suit, the court *may* grant to the *board*, without bond or other undertaking, such prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders."

Section 76. Section 60-140, R.C.M. 1947, is amended to read as follows:

"60-140. **Lands subject to act.** This *chapter applies* to all lands in the state lawfully subject to its taxation and police powers. *It applies* to lands of the United States or to lands subject to the jurisdiction of the United States only to the extent that control and supervision of conservation of oil and gas by the United States on its lands *fails* to effect the intent and purposes of this *chapter* and otherwise *applies* to *those* lands to such extent as any officer of the United States having jurisdiction, or his duly authorized representative, *approves* any of the provisions of this *chapter or an* order of the *board* which affect *those* lands. *This chapter also applies* to any lands committed to a unit agreement approved by the secretary of the interior or his duly authorized representative, except that the *board* may, with respect to *those* unit agreements, suspend the application of this *chapter* or any part of this *chapter* so long as the conservation of oil and gas and the prevention of waste as *provided* in this *chapter* is accomplished under *the* unit agreements*; the* suspension *does* not relieve *an* operator or owner from making such reports as may be required by the *board* with respect to operations and production under *the* unit agreement, *and the* suspension *does not* relieve *an* operator or owner from the payment of taxes on his oil and gas production or payment for permit fees as required by this *chapter.*"

Section 77. Section 60-141, R.C.M. 1947, is amended to read as follows:

"60-141. **Cooperation with other governmental units and agencies.** The *board may cooperate* with any other state, interstate, or federal agency, and other governmental agencies of the state to effect the objects and purposes of this act and expend such funds as may be reasonably necessary in connection therewith."

Section 78. Section 60-142, R.C.M. 1947, is amended to read as follows:

"60-142. **Penalties.** If *a* person willfully *violates* any lawful *rule* or order of *the board*, or if *a* person, for the purpose of evading this *chapter*, or any rule or order of the *board*, knowingly and willfully (1) *makes* or *causes* to be made *a* false entry or statement in a report required by this *chapter* or by *a* rule or order *of the board*, or *a* false entry in *a* record, account, or memorandum required by this *chapter*, or by *a* rule or order, or (2) *omits*, or *causes* to be omitted, from *the* record, account, or memorandum, full, true, and correct entries as required by this *chapter*, or by *a* rule or order, or (3) *removes* from this state or *destroys, mutilates, alters, or falsifies the* record, account, or memorandum, *that* person *is* guilty of a misdemeanor and shall be subject to a fine of not more than five thousand dollars *($5,000)* or imprisonment in a county jail for a term not exceeding six (6) months, or to both *the* fine and imprisonment."

Section 79. Section 60-143, R.C.M. 1947, is amended to read as follows:

"60-143. **Chapter does not constitute oil or gas wells as public utilities.** Nothing in this *chapter* shall in any manner be construed as constituting or attempting to constitute oil or gas wells as a public utility or utilities."

Section 80. Section 60-144, R.C.M. 1947, is amended to read as follows:

"60-144. **Owners shall make available to board cores and cuttings.** *An* owner drilling a well for gas or oil shall make available to the *board* at its field offices representative cores or chips, when available, and the cuttings from *the* well. *However*, cores, chips or cuttings need not be so made available for a period of six (6) months following completion or abandonment of *the* wells. *The board* may, however, relieve the owner of *a* well of the obligation to furnish *cores, chips, or cuttings* when in the opinion of the *board*, the furnishing thereof would be unduly burdensome for *the* owner; however, *the* owner desiring relief must apply to and receive permission from the *board* to not so furnish. The owner of *a* stratigraphic test well drilled for the purpose of obtaining lithologic information useful in potential oil and gas operations, as such well is defined by the *board's* rules shall within six (6) months from the date of the cessation of the drilling of *the* well, make available to the *board*, complete sets of sample cuttings and representative cores or chips and well logs of *the* wells, which logs shall include among other information the size of casing used and the type and depth of water if any located*; the* cuttings, cores, chips and logs shall be impounded and kept secure and confidential by the *board* until such time that the *board desires* to use the same; *however*, the *board* may not use *the* logs, chips, cores and cuttings from stratigraphic test wells until a period of three (3) years from the date of their impounding by the *board* has elapsed unless the owner of *the* stratigraphic test well consents to their use by the *board* prior to the expiration of the three (3) year period. The *board*, during the period of impoundment for any cores, cuttings, chips, or logs from any stratigraphic test well, *may* not give any person access to *the* cores, chips, cuttings or logs, and it *may* not disclose any information relating thereto or derived therefrom. The *board* shall require, and the owner of *a* stratigraphic test well shall furnish, prior to the commencement of drilling of *the* well, a good and sufficient surety bond, to be approved prior to the commencement of *the* drilling, conditioned upon the proper plugging of *the* well prior to abandonment, the amount of the bond to be determined by the estimated depth as in the *board's* rules provided for oil and gas wells, and, prior to abandonment, *the* wells shall be plugged by the owner thereof, or by the surety should the owner be in default, *the* plugging to conform to the standards set down and determined by the *board.*"

Section 81. Section 60-145, R.C.M. 1947, is amended to read as follows:

"60-145. **Privilege and license tax — quarterly statements — penalties — drilling permit fees — oil and gas conservation moneys.** *(1)* For the purpose of providing funds for defraying the expenses of the operation and enforcement of this *chapter*, and expenses of *the board*, the operators and producers of oil and gas shall pay an assessment not to exceed the amounts set forth in the following schedule on each barrel of crude petroleum originally produced, saved and marketed or stored within the state, or exported from the state, and on each ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state, or exported therefrom:

(a) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent (⅜¢) per barrel;

(b) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent (¾¢) per barrel; *and,*

(c) On wells producing, saving and marketing, storing, or exporting, natural gas, *the* operators and producers shall pay an assessment not to exceed two and one-half (2 ½) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet.

(2) The *board* shall by order, without prior notice, or hearing, fix the amount of *the* assessments and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the *board may not* exceed the limits prescribed *in this section.* The amounts of *the* assessments shall be a percentage factor (not to exceed one hundred per cent) of the rates set forth in *subsections (a), (b), and (c)* above, and the same percentage factor shall be applied by the *board* in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in *those subsections.* The producers of *the* crude petroleum and natural gas shall pay *the* assessments on each barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and *the* producers shall be reimbursed for *the* payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others *under* section 84-6208.

(3) For the purposes of this section, a "lease" *means* that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one *(1)* lessee which in whole or in part cover

or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one *(1)* particular unit agreement shall be considered as one *(1)* lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, *a* person, before commencing the drilling of *an* oil or gas well or stratigraphic test well or core hole, shall secure from the *board* a drilling permit and shall pay to the *board* therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars ($25.00); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars ($75.00); seven thousand (7,000) feet and deeper, one hundred fifty dollars ($150.00).

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of January, April, July and October, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the *board*, duly signed and sworn to, of all crude petroleum produced by him in this state during the preceding three (3) calendar months, and containing such other information as the *board* may require, and shall accompany *the* statement with the payment to the state treasurer of the assessment provided for in subsection *(1)* of this section, for the period covered by *the* statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced by him in this state, and shall make payment of the assessment provided for in subsection *(1)* of this section, at such times and for such periods as may be prescribed by *rule* of the *board.* Any producer carrying on business at more than one (1) place or location in this state may include all *those* places of business in one (1) statement.

(6) An assessment not paid within the time specified *is* delinquent, and a penalty of twenty-five per cent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon request of the *board* the attorney general *shall* commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this *chapter* shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of *the board* and for no other purpose; all *these* moneys shall be used by *the board* subject to the approval of the *department of administration* and biennial appropriations by the legislative assembly."

Section 82. Section 60-148, R.C.M. 1947, is amended to read as follows:

"60-148. **Availability of facilities to bureau.** The *board may* make available to the authorized personnel or representatives of the bureau *of mines and geology* such facilities, equipment, records, and cores and cuttings, or samples of cores and cuttings, as are, or may be, required by the bureau in the furtherance of its oil and gas research and study."

Section 83. Section 60-801, R.C.M. 1947, is amended to read as follows:

"60-801. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Underground reservoir" *means* any subsurface sand, stratum or formation of the earth suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

(2) "Natural gas" *means* gas either while in its original state or after the same has been processed by removal therefrom of component parts not essential to its use for light and fuel;

(3) "Native gas" *means* gas which has not been previously withdrawn from the earth;

(4) "Natural gas public utility" means any person, firm or corporation authorized to do business in this state and engaged in the business of transporting or distributing natural gas by means of pipelines into, within or through this state for ultimate public use;

(5) "Board" means the board of oil and gas conservation *provided for in section 82A-1508;*

(6) "Underground storage" *means* the process of injecting and storing of natural gas within and withdrawing of natural gas from an underground reservoir."

Section 84. Section 60-802, R.C.M. 1947, is amended to read as follows:

"60-802. **Underground storage.** *(1)* The underground storage of natural gas which promotes conservation thereof, which permits the building of reserves for orderly withdrawal in periods of peak demand, which makes more readily available natural gas to the domestic, commercial and industrial consumers of this state, or which provides a better year-round market to the various gas fields, serves the public interest and welfare of this state.

(2) Therefore, in the manner hereinafter provided the *board* and the court may find and determine that the underground storage of natural gas as hereinbefore defined is in the public interest."

Section 85. Section 60-803, R.C.M. 1947, is amended to read as follows:

"60-803. **Eminent domain — use and limitations.** *(1) A* natural gas public utility may acquire through the exercise of the right of eminent domain as provided *in this chapter* for its use for the underground storage of natural gas *an* underground reservoir which the *board finds is* suitable and in the public interest for the underground storage of natural gas, and in connection *with the underground reservoir the utility* may acquire such other interests in property as may be required adequately to maintain and operate *the* underground reservoir facilities. *The* acquisition by the exercise of the right of eminent domain of underground reservoirs granted *by this section is* limited as follows:

(a) No sand, formation, or stratum which is producing or has produced, or which is capable of producing oil, *is* subject to appropriation *under this section.*

(b) No gas-bearing sand, formation, or stratum *is* subject to appropriation *under this section,* unless the recoverable volumes of native gas therein have all been produced or unless *the* sand, formation or stratum has a greater value or utility as an underground reservoir for the purpose of insuring an adequate supply of natural gas for domestic, commercial, or industrial consumers of natural gas, or for the conservation of natural gas, than for the production of the remaining relatively small volumes of native gas as compared with the original volumes of natural gas therein. *Gas,* sand, formation or stratum *may not* be acquired under this *chapter* when the gas in the underground reservoir is being used for the secondary recovery of oil, unless gas in necessary and required amounts is furnished to the operator of the secondary recovery operations for as long as oil is produced in paying quantities in the secondary operations for the recovery of oil at the same cost as the cost to *the operator* at the time of acquisition of the gas being used in *the* secondary operations, not exceeding, however, the quantity of the appropriated gas that remained recoverable from *the* sand, formation or stratum at the time of its acquisition, if *the* operator was at *that* time entitled to the whole thereof, or if *the operator* was at *that* time entitled to less than the whole thereof, then not to exceed the quantity thereof to which *the* operator was then entitled.

(c) Only *the* area of *the* underground sand, formation or stratum as may reasonably be expected to be penetrated by gas displaced or injected into *the* underground gas storage reservoir may be appropriated.

(d) No rights or interests in existing underground gas reservoirs, being used for the injection, storage or withdrawal of natural gas, owned or operated by a natural gas public utility other than the natural gas public utility seeking to acquire the same, *are* subject to appropriation.

(2) The exercise of the right of eminent domain granted *by this section* shall be without prejudice to the rights of the owner of *the* lands or of other rights or interests therein to drill or bore into or through the underground reservoir so appropriated in *a* manner *that complies* with orders *and* rules of the *board* issued for the purpose of protecting *the* underground reservoir against pollution and against the escape of natural gas therefrom, and shall be without prejudice to the rights of the owner of *the* lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with *those rules* or orders in order to protect the storage reservoir shall be paid by the natural gas public utility."

Section 86. Section 60-804, R.C.M. 1947, is amended to read as follows:

"60-804. **Certificate of board — publication.** *A* natural gas public utility desiring to exercise the right of eminent domain as to any property for use for underground storage of natural gas shall, as a condition precedent to the filing of its complaint in the district court, apply for and obtain from the *board* a certificate setting out *the* findings of *the board:*

(a) that the underground sand, stratum or formation sought to be acquired is suitable for an underground reservoir for the storage of natural gas and that its use for such purposes is in the public interest;

(b) the amount of native gas, if any, remaining therein and the portion thereof recoverable;

(c) and that the applicant has in good faith sought to acquire the rights sought *under this chapter. The board may not* issue *the* certificate until after *a* public hearing is had on the application, pursuant to notice given to all persons known to have an interest in the property proposed to be acquired in the manner provided by the laws of the state for service of process in a civil action."

Section 87. Section 60-805, R.C.M. 1947, is amended to read as follows:

"60-805. **Proceedings.** *A* natural gas public utility having first obtained a certificate from the *board* desiring to exercise the right of eminent domain for the purpose of acquiring property for the underground storage of natural gas shall do so in the manner provided *in this section. The* natural gas public utility shall present to the district court of the county wherein the land is situated a complaint setting forth the purpose for which the property is sought to be acquired, a description of the property sought to be appropriated and the names of the owners thereof as shown by the records of *the* county. The plaintiff shall file the certificate of the *board* as a part of its complaint and no order by the court granting *the* complaint shall be entered without *the* certificate being filed therewith. *Subsequent* proceedings shall follow the procedure provided by law in the exercise of the rights of eminent domain, sections 93-9901 et seq."

Section 88. Section 76-103, R.C.M. 1947, is amended to read as follows:

"76-103. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this act;

(3) *"Department"* means the *department of natural resources and conservation provided for in Title 82A, chapter 15;*

(4) "Board" means the board of natural resources and conservation provided for in section 82A-1509;

(5) "Petition" means a petition filed under subsection *(1)* of section 76-105 for the creation of a district;

(6) "Nominating petition" means a petition filed under section 76-106 to nominate candidates for the office of supervisor of a soil conservation district;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise of either of them;

(10) "Land occupier" or "occupier of land" includes *a* person, firm, corporation, municipality or other entity who *holds* title to, or *is* in possession of, lands lying within a district organized under this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, *the* posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to *the* notice, at the time and place designated in *the* notice, adjournment may be made from time to time without the necessity of renewing *the* notice for *the* adjourned dates.

(12) "Qualified elector" means a qualified elector as defined in Title 23, R.C.M. 1947."

Section 89. Section 76-104, R.C.M. 1947, is amended to read as follows:

"76-104. **Duties of department.** In addition to the duties hereinafter conferred upon the *department*, it shall:

(1) *Offer* assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;

(2) *Keep* the supervisors of each of the several districts informed of the activities and experiences of all other districts, and facilitate an interchange of advice and experiences between *the* districts and *cooperation* between them;

(3) *Coordinate* the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;

(4) *Secure* the *cooperation* and assistance of the United States and of agencies of this state, in the work of *the* districts;

(5) *Disseminate* information throughout the state concerning the activities and programs of the conservation districts, and encourage the formation of districts in areas where their organization is desirable."

Section 90. Section 76-105, R.C.M. 1947, is amended to read as follows:

"76-105. **Creation of conservation districts.** *(1)* Any ten (10) qualified electors within the limits of the territory proposed to be organized

into a district may file a petition with the *department* asking that *the board approve the organization of* a conservation district to function in the territory described in the petition. *The* petition shall set forth:

(a) The proposed name of *the* district;

(b) That there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory described in the petition;

(c) A description of the territory proposed to be organized as a district, which description *may* not be required to be given by metes and bounds or by legal subdivisions, but shall be *considered* sufficient if generally accurate;

(d) A request that the *board* duly define the boundaries for *the* district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in *the* territory; and that the *board* determine that a district be created.

(2) Where more than one *(1)* petition is filed covering parts of the same territory, the *board* may consolidate all or any part of *the* petitions.

(3) Within thirty (30) days after a petition has been filed with the *department*, it shall cause due notice to be given of a proposed hearing *before the department* upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of *the* district, upon the question of the appropriate boundaries to be assigned to *the* district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to *those* inquiries. All qualified electors within the limits of the territory described in the petition, and of lands within any territory considered for addition to *the* described territory, and all other interested parties, *are entitled* to attend *the* hearings and be heard. If it *appears to the board after reviewing the record of* the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the *board shall adjourn the* hearing and *the department shall cause* due notice of *a* further hearing *to* be given throughout the entire area considered for inclusion in the district, and *the* further hearing *shall be* held *by the department.* After *the* hearing, if the *board determines*, upon the facts presented at *the* hearing and upon other relevant facts and information as may be available *to the department or the board*, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record *that* determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of *the* district. In making *the* determinations and in defining *the* boundaries, the *board* shall *consider* the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits *those* lands may receive from being included within *the* boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and other conservation districts already organized or

proposed for organization under this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within *the* boundaries need not be contiguous. If the *board determines* after *the* hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record *that* determination and shall deny the petition. After six (6) months have expired from the date of the denial of *a* petition, subsequent petitions covering the same or substantially the same territory may be filed and *a* new hearing held and determinations made thereon.

(4) After the *board* has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within *the* boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the *board* in the determination of *this* administrative practicability and feasibility, *the department shall*, within a reasonable time after entry of the *board's* finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district, and cause due notice of *the* referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of *the* propositions as the voter may favor or oppose creation of *the* district. The ballot shall set forth the boundaries of *the* proposed district as determined by the *board.* All qualified electors within the boundaries of the territory, as determined by the *department*, *are* eligible to vote in *the* referendum.

(5) The *department* shall pay all expenses for the issuance of *the* notices and the conduct of *the* hearings and referenda, and shall supervise the conduct of *the* hearings and referenda. It shall *adopt* appropriate *rules* governing the conduct of *the* hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in *the* referendum. No informalities in the conduct of *the* referendum or in any matters relating thereto shall invalidate *the* referendum or the result thereof if notice thereof *has* been given substantially as herein provided and *the* referendum *has* been fairly conducted.

(6) The *department* shall publish the result of *the* referendum and *the board* shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the *board determines* that the operation of *the* district is not administratively practicable and feasible, it shall record *that* determination and deny the petition. If the *board determines* that the operation

of *the* district is administratively practicable and feasible, it shall record *that* determination and shall proceed with the organization of the district in the manner hereinafter provided. In making *its* determination the *board* shall *consider* the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in *the* referendum who voted, the proportion of the votes cast in *the* referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within *the* district, and such other economic and social factors relevant to *the* determination, having due regard to the legislative determinations set forth in section 76-102; however, the *board may not* determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district have been cast in favor of the creation of *the* district.

(7) If the *board determines* that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. *The* district *is* a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

(8) The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth: *(a)* That a petition for the creation of the district was filed with the *department* pursuant to this act, that the proceedings specified in this act were taken pursuant to *the* petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act, and that the *board* has appointed them as supervisors; *(b)* the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; *(c)* the term of office of each of the supervisors; *(d)* the name which is proposed for the district; and *(e)* the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the supervisors. The application shall be accompanied by a statement by the *department*, which shall certify that a petition was filed, notice issued, and hearing held as *provided in this act*; that the *board determined* that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory, and *defined* the boundaries thereof; that notice was given and a referendum held on the question of the creation of *the* district, and that the result of *the* referendum showed a majority of the votes cast in *the* referendum to be in favor of the creation of the district; *and* that thereafter the *board determined* that the operation of the proposed district is administratively practicable and feasible. *The* statement shall *also* set forth the boundaries of the district as they have been defined by the *board*.

(9) The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state *finds* that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify *that* fact to the *board*, which shall thereupon submit to the secretary of state a new name for the district, which *is* not subject to such defects. Upon receipt of *the* new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district *is* a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the supervisors without cost a certificate, under the seal of the state, of the due organization of the district, and shall record *the* certificate with the application and statement. The boundaries of *the* district shall include the territory as determined by the *board*, but they *may not* include any area included within the boundaries of another conservation district.

(10) After six (6) months have expired from the date of entry of a determination by the *board* that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to *the* determination, subsequent petitions may be filed and action taken thereon in accordance with this act.

(11) Petitions for including additional territory within an existing district may be filed with the *department*, and the proceedings herein provided for in the case of petitions to organize a district shall be *followed* in the case of petitions for *the* inclusion. The *department* shall prescribe the form for *the* petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion *are* less than ten (10), the petition may be filed when signed by a majority of the qualified electors of *the* area, and in *that* case no referendum need be held. In referenda upon petitions for *the* inclusion, all qualified electors within the proposed additional area *are* eligible to vote.

(12) In *a* suit, action, or proceeding involving the validity or enforcement of, or relating to, *a* contract, proceeding, or action of the district, the district shall be *considered* to have been established in accordance with this act upon proof of the issuance of the certificate by the secretary of state. A copy of *the* certificate, duly certified by the secretary of state, *is* admissible in evidence in *the* suit, action, or proceeding and *is* proof of the filing and contents thereof."

Section 91. Section 76-106, R.C.M. 1947, is amended to read as follows:

"76-106. **Election of supervisors for each district.** Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the *department* to nominate candidates for supervisors of *the district.* The *department may* extend the time within which nominating petitions may be filed. *A* nominating petition *may not* be accepted by the *department* unless it *is* subscribed by ten (10) or more qualified electors

within the boundaries of *the* district. Qualified electors may sign more than one (1) nominating petition to nominate more than one (1) candidate for supervisor. The *department* shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom *the* nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All qualified electors within the district *are* eligible to vote in *the* election. The three (3) candidates who receive the largest number, respectively, of the votes cast in *the* election *are* the elected supervisors for *the* district. The *department* shall pay all the expenses of *the* election, shall supervise the conduct thereof, shall prescribe *rules* governing the conduct of *the* election and the determination of the eligibility of votes therein, and shall publish the results thereof."

Section 92. Section 76-107, R.C.M. 1947, is amended to read as follows:

"76-107. **Appointment, qualifications and tenure of supervisors.** *(1)* The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the muncipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

(3) Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

(4) The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors constitute a quorum and the concurrence of a majority in any matter within their duties *is* required for its determination. A supervisor *may not* receive compensation for his services, but he *is* entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

(5) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents or employees, such powers and duties as they *consider* proper. The supervisors shall furnish to the *department* copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they adopt or employ, and such other information concerning their activities as may be required in the performance of *their* duties under this act.

(6) The supervisors shall provide for the execution of surety bonds for all employees and officers who *are* entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. *A* supervisor may be removed by the *board* upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(7) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of *the* municipality or county."

Section 93. Section 76-111, R.C.M. 1947, is amended to read as follows:

"76-111. **Board of adjustment.** *(1)* Where the supervisors of *a* district adopt an ordinance prescribing land-use regulations in accordance with section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. *The* board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each board of adjustment shall be appointed by the *department,* with the advice and approval of the supervisors of the district for which *the* board has been established, and *may* be *removed by the department,* upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, *the* hearing to be conducted jointly by the *department* and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the *board of natural resources and conservation, employees of the department,* and the supervisors of the district *are* ineligible to appointment as members of the board of adjustment. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars ($4) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

(2) The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with this act, and with any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

(3) Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of *the* regulations to the lands occupied by the petitioner. Copies of *the* petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the *department.* The board of adjustment shall fix a time for the hearing of the petition and cause due notice of *the* hearing to be given. The supervisors of the district and the *department are entitled* to appear and be heard at *the* hearing. *A* qualified elector within the district who *objects* to the authorizing of the variance prayed for may intervene and become a party to the proceedings. *A* party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at *the* hearing the board *determines* that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record *that* determination and shall make and record findings of fact as to the specific conditions which establish *the* great practical difficulties or unnecessary hardship. Upon the basis of *the* findings and determination, the board *may* order *a* variance from the terms of the land-use regulations, in their application to the lands of the petitioner, *that* will relieve *the* great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations *are* observed, the public health, safety, and welfare secured, and substantial justice done.

(4) A petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district, or *an* intervening party, may obtain a review of *the* order in any district court of the county, in which the lands of the petitioner lie, by filing in *the* court a petition praying that the order of the board be modified or set aside. A copy of *the* petition shall *immediately* be served upon the parties to the hearing before the board, and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon *the* filing, the court shall

cause notice thereof to be served upon the parties, and *the court has* jurisdiction of the proceedings and of the questions determined or to be determined therein, and *may* grant such temporary relief as it deems just and proper, and make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. *A* contention that *is* not urged before the board *may not* be considered by the court unless the failure or neglect to urge *the* contention *is* excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, *are* conclusive. If *a* party *applies* to the court for leave to produce additional evidence and *shows* to the satisfaction of the court that *the* evidence is material and that there *are* reasonable grounds for the failure to produce *the* evidence in the hearing before the board, the court may order *the* additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file *the* modified or new findings, which, if supported by evidence, *are* conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court *is* exclusive and its judgment and decree *are* final, except that *they are* subject to review in the same manner as are other judgments or decrees of the court."

Section 94. Section 76-114, R.C.M. 1947, is amended to read as follows:

"76-114. **Discontinuance of districts.** (1) At any time after five (5) years after the organization of a district under this act, any ten (10) qualified electors within the boundaries of *the* district may file a petition with the *department,* praying that the *board terminate the* operations of the district and *discontinue* the existence of the district. The *department* may conduct such public meetings and public hearings upon *the* petition as *are* necessary to assist it *and the board* in the consideration thereof.

(2) Within sixty (60) days after *the* petition has been received by the *department* it shall give due notice of the holding of a referendum, and shall supervise *the* referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of *the* propositions as the voter may favor or oppose discontinuance of *the* district. All qualified electors within the boundaries of the district *are* eligible to vote in *the* referendum. No informalities in the conduct of *the* referendum or in any matters relative thereto shall invalidate *the* referendum or the result thereof if notice thereof *is* given substantially as herein provided and *the* referendum *is* fairly conducted.

(3) The *department* shall publish the result of *the* referendum and *the board* shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the *board determines* that the continued oper-

ation of *the* district is administratively practicable and feasible, it shall record *that* determination and deny the petition. If the *board determines* that the continued operation of *the* district is not administratively practicable and feasible, it shall record *that* determination and shall certify *the* determination to the supervisors of the district.

(4) In making *the* determination the *board* shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of land occupiers qualified electors eligible to vote in *the* referendum who voted, the proportion of the votes cast in *the* referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within *the* district, and such other economic and social factors as may be relevant to *the* determination, having due regard to the legislative findings set forth in section 76-102; however, the *board may* not determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum *are* cast in favor of the continuance of *the* district.

(5) Upon receipt from the *department* of a certification *of the board* that the *board* has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to this section, the supervisors shall *immediately* proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of *the* sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of *the* district, and shall transmit with *the* application the certificate of the *board*, setting forth the determination of the *board* that the continued operation of *the* district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of *the* properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record *the* certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under this section, all ordinances and regulations theretofore adopted and in force within *the district are void.* All contracts *previously* entered into, to which the district or supervisors are parties, remain in effect for the period provided in *those* contracts. The *department* shall be substituted for the district or supervisors as party to *the* contracts. The *department is* entitled to all benefits and subject to all liabilities under *the* contracts and *has* the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate *the* contracts by mutual consent or otherwise, as the supervisors of the district would have had. *The* dissolution *does* not affect the lien of any judgment entered under section 76-110, nor the pendency of *an* action instituted under *that* section, and the *department succeeds* to all rights and obligations of the district or supervisors as to *those* liens and actions."

Section 95. Section 76-115, R.C.M. 1947, is amended to read as follows:

"76-115. **Disposition of funds.** *(1)* Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts shall be allocated by the *department* among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection *(2)* of this section. All moneys allocated to *a* district by the *department* shall be available to the supervisors of *the* district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by *the* district.

(2) Seventy-five per cent (75%) of all moneys which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the *department* among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five per cent (25%) of *the* moneys shall be allocated by the *department* among the districts on such basis of allocation as *is* fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of *the* moneys, the *department* shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

(3) The *department* shall submit to the *department of administration,* on or before the first (1st) day of *August* of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the *department* and to the districts; and the estimates of the *department* as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period."

Section 96. Section 76-117, R.C.M. 1947, is amended to read as follows:

"76-117. **Change of district name — division and combination of districts.** (1) Petitions for changing the name of a district organized under this act may be filed with the *department. The* petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the *department* determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty,

it shall present a statement of *that* determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of *the* certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the *department* for the division of any district or the combination of any two (2) or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of *these* actions may be initiated by the filing of a single petition with the *department. The* petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The *department* shall prescribe the form for *the* petition. Upon the filing of *the* petition, the *department* shall within thirty (30) days give due notice of public hearing upon *the* petition. All qualified electors within the affected districts, and all other interested parties, *are entitled* to attend *the* hearing and be heard. After *the* hearing, the *board of natural resources and conservation upon the record of the hearing* shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making *the* determination the *board* shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the *board determines* that the proposed division or combination, or division and combination, is administratively practicable and feasible, the *board* shall effect *the* proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of *the* districts. If *the* determination is in the negative the *board* shall make and record *that* determination and shall deny the petition. After six (6) months from the denial of *the* petition, a new petition may be filed.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each divided part, the number of qualified electors and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of *the* allocation shall be filed with the *department* within thirty (30) days after the notification of the *board's* determination in favor of the division of the district. Upon the failure of the supervisors to make, or to agree upon, *the* allocation, it shall be made by the *department* after such hearing as the *department considers* necessary, and with due regard for the standards set out in this paragraph for making *the* allocations."

Section 97. Section 81-1401, R.C.M. 1947, is amended to read as follows:

"81-1401. **Classification of lands as state forests.** All lands at present owned by the state, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are

principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated "state forests," and reserved for forest production and watershed protection."

Section 98. Section 81-1404, R.C.M. 1947, is amended to read as follows:

"81-1404. **Sale of timber — advertising for bids — purchaser's agreement.** Under the direction of the state board of land commissioners, the *department of natural resources and conservation* may sell the timber crop and other crops of the forests, after examination, estimate, appraisal and report, and under such rules as may be established by the board; timber proposed for sale in excess of 100,000 feet board measure shall be advertised in a paper of the county in which the timber is situated for a period of at least thirty *(30)* days, during which time the *department of natural resources and conservation* shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale. *The department of natural resources and conservation may* reject any or all bids, upon approval of the board; or *it* shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which *describes* the area on which the timber is to be cut, the approximate quantity to be cut by species, the rate for each product of each species, and *it* shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling and slash disposal, and such other rules as in the discretion of the board are essential to the perpetuation of the state forests."

Section 99. Section 81-1406, R.C.M. 1947, is amended to read as follows:

"81-1406. **Breach of timber sale agreement.** For breach of timber sale agreement, the *department of natural resources and conservation may* suspend cutting or removal of the timber, and take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages, or *it* may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond."

Section 100. Section 81-1408, R.C.M. 1947, is amended to read as follows:

"81-1408. **Duties concerning lumber cutting — scaling.** *The department of natural resources and conservation shall* supervise all the *management of* timber before it is cut, *and* secure the most complete utilization of all forest products consistent with the current *forest management practices.* It shall instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and fix and establish the standard practice in timber sales administration. *It* shall require that each merchantable log be scaled by the Scribner decimal C. log rule at the small end on the average diameter inside bark taken to the nearest inch, and that deduction be made for *any* apparent defect, or *it* shall fix and determine converting factors and units of measure for all forest products,

which shall be as nearly as practical equivalent to the Scribner decimal C. log scale. Records of converting factors, units of measure and the scale of logs shall be kept as a permanent public record showing the date of scale or measurement, the designation of the scale and the name of the scaler. Where the volume of timber involved is not in excess of one million (1,000,000) board feet log scale, the *department of natural resources and conservation may* designate each tree to be cut and make a tree scale measurement of all trees to be sold."

Section 101. Section 81-1409, R.C.M. 1947, is amended to read as follows:

"81-1409. **Cooperation with owners and lessees.** For the purpose of more adequately promoting and facilitating the *cooperation*, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the *department of natural resources and conservation may cooperate* with owners or lessees of farm, range, forest, watershed or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon; and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow."

Section 102. Section 81-1411, R.C.M. 1947, is amended to read as follows:

"81-1411. **Duties of department of natural resources and conservation.** The *department of natural resources and conservation* shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands. *It* shall do all acts required of *it* by the board, and under the direction of *the* board *it has* general charge of the timberlands of the state. *It* shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce the laws pertaining to forest and brushcover lands, and prosecute for any violation of *those* laws. *It* shall furnish notices, *printed* in large letters, calling attention to the danger from forest fires, and to the forest fire and trespass laws, and their penalties. *These* notices shall be posted by the firewarden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region."

Section 103. Section 81-1412, R.C.M. 1947, is amended to read as follows:

"81-1412. **Firewardens.** The *department of natural resources and conservation* shall appoint in such number and localities as *it considers* wise, public-spirited citizens to act as volunteer firewardens. Every sheriff, undersheriff, deputy sheriff, *state fish and* game warden, and

state fish and game director is ex officio a firewarden, but *may* not receive any additional compensation by reason of the duties hereby imposed, and they shall be *considered* paid firewardens under the terms of this act. The supervisors and rangers of the federal forest lands within this state whenever they formally accept the duties and responsibilities of firewardens, may be appointed volunteer firewardens, and have all the powers given to firewardens by this act. The firewardens shall promptly report all fires to the *department of natural resources and conservation*, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 104. Section 81-1413, R.C.M. 1947, is amended to read as follows:

"81-1413. **Powers of firewardens.** *All* firewardens have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and *a* firewarden *is not* liable for civil action for trespass committed in the discharge of his duties. *A* firewarden who has information which shows, with reasonable certainty, that *a* person has violated any provision of *those* forest laws, shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of *a* paid firewarden to comply with the duties prescribed in this act *is* a misdemeanor, and punishable by a fine of not less than twenty dollars *($20)* nor more than one thousand dollars *($1,000)*, or imprisonment in the county jail for not less than ten *(10)* days nor more than twelve *(12)* months, or by both such fine and imprisonment; and upon his conviction, the district court wherein he is convicted shall *immediately* declare his office vacant, and notify the proper appointing power thereof."

Section 105. Section 81-1415, R.C.M. 1947, is amended to read as follows:

"81-1415. **Duties of firewardens and foresters.** The *department of natural resources and conservation* and all firewardens (except volunteer wardens), under such rules as the state board of land commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose, in emergencies, may employ men and incur other expenses when necessary."

Section 106. There is a new section to be numbered 28-801, R.C.M. 1947, which reads as follows:

28-801. **Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Portable sawmill" means a sawmill located upon forest land within the state and having a rated capacity of less than five thousand (5,000) feet per hour of operation.

Section 107. Section 81-1501, R.C.M. 1947, is renumbered section 28-802, and is amended to read as follows:

"*28-802.* **Portable sawmill license required.** *It is* unlawful to operate a portable sawmill located upon forest lands within the state without first obtaining a license therefor from the *department.*"

Section 108. Section 81-1502, R.C.M. 1947, is renumbered 28-803, and is amended to read as follows:

"*28-803.* **Application for license — fee.** Whenever *a* person, firm or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state, *that* person, firm or corporation shall *apply* to the *department* in writing for a license to operate the portable sawmill. The application shall *include* the name of the person, firm or corporation contemplating the operation of the sawmill, the location thereof by section, township and range numbers, the rated capacity of the sawmill and the approximate amount of stumpage to be cut at the proposed setting and the approximate date desired for the commencement of the operation. The application shall be accompanied by the payment of a fee of two dollars ($2.00), which is fixed as the license fee for the operation of any portable sawmill, to be credited to the *federal and private grant clearance* fund."

Section 109. Section 81-1503, R.C.M. 1947, is renumbered 28-804, and is amended to read as follows:

"*28-804.* **Issuance of license — term.** Upon receipt of *the* application and the payment of the fee the *department* shall issue a license to the person, firm or corporation applying therefor. *The* license shall be upon a form provided by the *department* and shall cover such period as *the* sawmill *remains* in continuous operation on a single setting or location, or until revocation by the *department.*"

Section 110. Section 81-1504, R.C.M. 1947, is renumbered 28-805, and is amended to read as follows:

"*28-805.* **Revocation of license for violation of law.** Whenever it *appears* that there is a violation of any law of the state enacted for the protection of forest and forest lands in connection with the operation of *a* portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at *a* mill is cut, the *department may* revoke *the* license and thereby suspend the operation of *a* sawmill until the conditions constituting a violation of law *are* remedied and removed."

Section 111. Section 81-1506, R.C.M. 1947, is renumbered 28-806, and is amended to read as follows:

"*28-806.* **Penalty for violations.** *A* person, firm or corporation violating this act *is* guilty of a misdemeanor and shall be fined not less than twenty-five dollars *($25)* nor more than five hundred dollars *($500)*, which fines are to be credited to the general school funds of the state; this act shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state."

Section 112. Section 81-2009, R.C.M. 1947, is renumbered 89-142, and is amended to read as follows:

"*89-142.* **Department of natural resources and conservation authorized to negotiate with other states regarding interstate**

waters. The *department of natural resources and conservation may* negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution and allocation of the water of any stream or streams flowing from Montana into such other states or flowing from such other states into Montana. *It* shall *cooperate* with other states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of *the* compacts. *This* authority and the duties hereby imposed are limited to the preparation and proposal of *the* compact and *the* compact or agreement *is not* binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in *the* compact."

Section 113. Section 81-2018, R.C.M. 1947, is amended to read as follows:

"81-2018. **Appropriation of water by state.** The state board of land commissioners *may*, through the *department of natural resources and conservation*, at its discretion, appropriate any available waters for use upon state lands, and authorize the construction of irrigation *works* for *these* lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals."

Section 114. Section 82A-1501, R.C.M. 1947, is amended to read as follows:

"82A-1501. **Department of natural resources and conservation — creation — head.** There is a department of natural resources and conservation. The department head is the director of natural resources and conservation *appointed by the governor in accordance with section 82A-106.*"

Section 115. There is a new section to be numbered 82A-1501.1, R.C.M. 1947, which reads as follows:

82A-1501.1. **Functions of department.** The department and its units are responsible for administering laws pertaining to natural resources, including, but not limited to, laws pertaining to:

(1) Forests and forestry (Title 28, chapter 1);
(2) Disposal of slashings and forest debris (Title 28, chapter 4);
(3) Portable sawmill regulation (Title 28, chapter 8);
(4) Grass conservation (Title 46, chapter 23);
(5) Conservation of oil and gas (Title 60, chapter 1);
(6) Underground gas storage (Title 60, chapter 8);
(7) Utility sites (Title 70, chapter 8);
(8) Soil and water conservation (Title 76, chapter 1);
(9) State forests (Title 81, chapter 14);
(10) Water for state lands (Title 81, chapter 20);
(11) Water resources (Title 89, chapter 1);
(12) Weather modification (Title 89, chapter 3);
(13) Water conservation moneys (Title 89, chapter 4);
(14) Examination of dams and reservoirs (Title 89, chapter 7);
(15) Water rights (Title 89, chapter 8);
(16) Yellowstone river compact (Title 89, chapter 9);
(17) Irrigation districts (Title 89, chapter 12);
(18) Regulation of groundwater (Title 89, chapter 29);
(19) Conservancy districts (Title 89, chapter 34).

Section 116. Section 82A-1508, R.C.M. 1947, is amended to read as follows:

"82A-1508. **Board of oil and gas conservation — composition — allocation — designation.** (1) *There is a board of* oil and gas conservation.

(2) The board consists of five (5) members, two (2) of whom shall be from the oil and gas industry and have had at least three (3) years' experience in the production of oil and gas.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 117. Section 82A-1509, R.C.M. 1947, is amended to read as follows:

"82A-1509. **Board of natural resources and conservation — creation — composition — designation.** (1) There is a board of natural resources and conservation.

(2) The board is composed of seven (7) members, appointed by the governor as prescribed in section 82A-112, informed and experienced in the subjects of natural resources and conservation.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

(5) In addition to carrying out its functions as provided by law, the board shall act in an advisory capacity to the department in all other matters."

Section 118. Section 89-101.1, R.C.M. 1947, is amended to read as follows:

"89-101.1. **Short title.** This *chapter* shall be known and may be cited as the "Montana Water Resources Act."

Section 119. Section 89-101.2, R.C.M. 1947, is amended to read as follows:

"89-101.2. **State necessity and policy.** It is hereby declared that:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through

the *department of natural resources and conservation* shall *coordinate the* development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to *coordinate* local, state and federal water resource development and utilization plans and projects through a single agency of state government, *the department of natural resources and conservation.*

(8) The greatest economic benefit to the people of Montana can be secured only by the sound *coordination* of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, *coordinated* multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

Section 120. Section 89-102, R.C.M. 1947, is amended to read as follows:

"89-102. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(2) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(3) "Works" means all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the *department* in connection with *those* works, and *includes* all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and *includes* all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose

of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses, and for fire protection.

(4) "Cost of works" means the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for *the* construction, the cost of all water rights acquired or exercised by the *department* in connection with *those* works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; however, the *department* in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including, but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(5) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(6) "Project" means any one of the works hereinabove defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(7) If water rights *are* acquired or exercised by the *department* in connection with two *(2)* or more works or projects, the *department* by *order* shall apportion or allocate to each of *the* works or projects such part of *those* water rights as it may determine, and upon the adoption of *the order, those* water rights shall be *considered* a part of each of *the* works or projects to the extent that *the* water rights have been so apportioned or allocated thereto respectively."

Section 121. There is a new section to be numbered 89-102.1, R.C.M. 1947, which reads as follows:

89-102.1. **Rules of board.** The board may adopt from time to time, as necessary or expedient, suitable rules for the administration of this chapter.

Section 122. Section 89-103.2, R.C.M. 1947, is amended to read as follows:

"89-103.2. **Powers and duties of department subject to approval of board.** *The department may* not acquire by appropriation or otherwise *a* water right or interest therein and *may* not acquire real property or *an* interest therein *(except rights of access for the purpose of construction, operation, or maintenance of works)* or mortgage or otherwise create a lien on the same or dispose of in any manner water rights or *real* property *or interest therein* without *prior* approval of *the* board. The *department*

may not construct or cause to be constructed or contract for the construction of works or projects without *prior* approval of *the* board. *The department may not loan funds to a person or water user association for the purpose of constructing or maintaining works without prior approval of the board.*"

Section 123. Section 89-104, R.C.M. 1947, is amended to read as follows:

"89-104. **Acquisition of necessary property.** *(1)* The *department, subject to the approval of the board under section 89-103.2, may* acquire by purchase, or exchange upon terms and conditions and in *a* manner it *considers* proper, and acquire by condemnation in accordance with laws applicable to the condemnation of property for public use, any land, rights, water rights, easements, franchises and other property *considered* necessary for the construction, operation and maintenance of works. Title to property purchased or condemned shall be taken in the name of the *department.* The *department is* under no obligation to accept and pay for any property condemned under this act except from the funds provided by this act, and in any proceedings to condemn, orders may be made by the court having jurisdiction of the suit, action or proceeding as may be warranted by law and the facts.

(2) In condemnation proceedings brought under the powers of eminent domain for the purpose of carrying out this act, all persons interested in the title of or holding liens upon the property sought to be acquired as disclosed by the public records, shall be made parties, and the court in *the* action shall partition and distribute the damages awarded, if any, among *those* persons as their rights appear. *If there is* controversy between them the court may direct the amount of *the* damage awarded to be paid into court to abide the result of further appropriate proceedings either at law or in equity.

(3) The taking possession of the property sought to be condemned *may* not be delayed by reason of any dispute between *the* rival claimants or the failure to join any of them as a party to *the* proceedings in condemnation."

Section 124. Section 89-105, R.C.M. 1947, is amended to read as follows:

"89-105. **Power of department to construct works and to act beyond jurisdiction.** *(1) Subject* to *the approval of the board, the department may* construct works, the cost of *the* construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing *the* construction from the United States or any instrumentality or agency thereof and of other funds provided under the authority of this act. Before constructing *a* project, the department shall *estimate* the cost of the project, the cost of maintaining, repairing and operating *it,* and the revenues to be derived therefrom, and *a* project *may not* be constructed unless, according to *the* estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing and operating *it,* and to pay the principal and interest of revenue bonds which may be issued for the cost of *the* project; however, in connec-

tion with the issuance of *revenue* bonds, the failure of the *department* to make the estimates required by this section or to make *them* in proper form *does not* affect the validity or enforceability of *those* bonds or of the trust indenture, resolution or other security therefor.

(2) However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the department estimates of the cost of the improvements by more than five per cent (5%), the department shall obtain approval from the *water* user association before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) The purpose of this act is to meet, so far as possible, a state-wide need for the conservation and use of water, through the construction and operation of projects designed for *those* purposes. The *department may* make investigations as *are* necessary to plan and carry out a comprehensive state-wide program of water conservation. The projects to be finally constructed shall qualify as parts of *the* state-wide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the construction; however, the failure of the board to determine *the* prospective ability of a project *does not* affect the validity or enforceability of *the* bonds or of the trust indenture, resolution, or other security therefor.

(4) The *department* may exercise any of its powers:

(a) In *an* adjoining state, unless the exercise of *that* power is not permitted under the laws of *that* state or of the United States.

(b) In *a* national forest or public domain of the United States adjoining, or located in, the state of Montana, unless the exercise of *those* powers is not permitted under the laws of the United States.

(c) In *an* adjoining country unless the exercise of *those* powers is not permitted under the laws of *that* country or of the United States or under the treaties between *that* country and the United States."

Section 125. Section 89-106, R.C.M. 1947, is amended to read as follows:

"89-106. **Department may construct irrigation works across streams, highways, etc.** *(1)* The *department may* construct irrigation works across any stream of water, watercourse, streets, avenues, highways, railways, canals, ditches or flumes in such manner as to afford security to life and property. *The department* shall restore the same, when so crossed or intersected, to its former state, as near as may be, so as not to destroy its usefulness. *A* company whose railroads *are* intersected or crossed by *the* works shall unite with *the department* in forming *the* intersection and crossing. *If the* railroad company and *the department*, or the owners and controllers of *the* property, thing, or franchise so to be crossed cannot agree upon the amount to be paid therefor, or the points or the manner of *the* crossing or intersections, the *amount* shall be ascertained and determined in all respects as herein provided in respect to taking of land for public use.

(2) This section does not require the payment to the state or any subdivision thereof, of *a* sum for the right to cross *a* public highway with *the* works. *A* right of way is hereby given, dedicated, and set apart to locate, construct, and maintain *the* works over and through the lands which are the property of this state."

Section 126. Section 89-111, R.C.M. 1947, is amended to read as follows:

"89-111. **Trust indenture, resolution and covenants of board.** (1) In the discretion of the board, *a* series of *the* bonds may be secured by a trust indenture by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Each trust indenture or an executed counterpart thereof shall be filed in the office of the secretary of state of Montana. The filing of a trust indenture or an executed counterpart thereof in the office of the county clerk of the county in which the property covered by *the* trust indenture is located *is* constructive notice of *its* contents to all persons from the time of *the* filing, and *the* recording of *the* trust indenture or *its* contents *is not* necessary.

(2) Either the resolution providing for the issuance of bonds or *the* trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders as *are* reasonable and proper, not in violation of law, including covenants setting forth the duties of the state, the board, *and the department* in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, the custody, safeguarding and application of all moneys, and *it* may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the *department* and satisfactory to the original purchasers of the bonds issued therefor, their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depositary of the proceeds of the bonds or receipts and revenues of the works, or other moneys pertaining thereto, shall be satisfactory to *the* purchasers, successors, assigns, or nominees. *The* resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trusts and mortgages securing bonds or debentures of corporations. No enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained. All expenses incurred in carrying out *the* trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the works affected by *the* indenture.

(3) In connection with the issuance of *the* bonds for the purpose of paying in whole, or as supplemented by a grant from the United States or any instrumentality or agency thereof, the cost of *the* works or project, or in order to secure the payment of *the* bonds, the board *may*:

(a) *Pledge* all or any part of the income, profit and revenue of *the* works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the oper-

ation, lease, sale or other disposition of all or any part of *the* works or project, and covenant to pay *the* income, profit and revenue into the appropriate water fund and sinking fund.

(b) *Covenant* against pledging all or any part of the income, profit and revenue of *the* works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of *the* works or project.

(c) *Covenant* against mortgaging all or any part of *the* works or project, or against permitting or suffering any lien thereon.

(d) *Covenant* to fix and establish such prices, rates and charges for water and other services made available in connection with *the* works or project so as to provide at all times funds which will be sufficient, (1) to pay all costs of operation and maintenance of *the* works or project together with necessary repairs thereto, and (2) to meet and pay the principal and interest of all *the* bonds as they severally become due and payable, and (3) to create such reserves for the principal and interest of all *the* bonds and for the meeting of contingencies in the operation and maintenance of *the* works or project as the board *determines*; and make such further covenants as to such prices, rates and charges as the board *determines*.

(e) *Create* special funds, in addition to those required by this act, for moneys reserved for principal and interest on bonds or for the meeting of contingencies in the operation and maintenance of *the* works or project and determine the manner in which, and the depositary or depositaries in which, *those* funds shall be deposited and the manner in which *they* shall be secured, and it *is* lawful for any bank or trust company incorporated under the laws of the state to act as *that* depositary and to furnish such indemnifying bonds or to pledge such securities as required by the board.

(f) *Provide* for the replacement of lost, destroyed or mutilated bonds.

(g) *Covenant* against extending the time for the payment of the principal or interest on any of *the* bonds, directly or indirectly by any means or in any manner.

(h) *Prescribe* and covenant as to the events of default and terms and conditions upon which any or all of *the* bonds shall become or may be declared due before maturity and as to the terms and conditions upon which *the* declaration and its consequences may be waived.

(i) *Covenant* as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) *Vest* in a trustee or trustees the right to enforce any covenant made to secure or to pay *the* bonds, or to foreclose any trust indenture in relation thereto, provide for the powers and duties of *the* trustee or trustees, limit the liabilities thereof, and provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce *the* covenant or exercise the right of foreclosure.

(k) *Make* such covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure *the* bonds, or, in the absolute discretion of the board, to make *the* bonds more marketable, notwithstanding that *the* covenants, acts or things may not be enumerated or expressly authorized herein.

(l) *Do* all things in the issuance of *the* bonds, and *provide* for their security, not inconsistent with the constitution of Montana."

Section 127. Section 89-113, R.C.M. 1947, is amended to read as follows:

"89-113. **Funds.** The board shall create a fund to be known as "administration fund" and shall also create three (3) separate funds in respect of the bonds of each series, one (1) fund to be known as the "construction fund, series ...," another fund to be known as the "water fund, series ...," and another fund to be known as the "sinking fund, series ...," each fund to be identified by the same series letter or letters as the bonds of *the* series. The moneys in each fund shall be deposited in such depository or depositories and secured in such manner as determined by the board. It *is* lawful for any bank or trust company incorporated under the laws of this state to act as *the* depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the board. A separate account shall be kept in each construction fund and in each water fund for each project. All expenditures not properly chargeable to the construction fund account or to the water fund account of any one project shall be charged by the *department* in such proportions as it shall determine to the construction fund accounts or to the water fund accounts, as the case may be, of the projects in respect of which *the* expenditures were incurred."

Section 128. Section 89-114, R.C.M. 1947, is amended to read as follows:

"89-114. **Construction funds.** The proceeds of the bonds of each series issued under this act shall be placed to the credit of the appropriate construction fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall also be credited to the appropriate construction fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in *the* fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in each construction fund shall be paid out or disbursed in such manner as may be determined by the *department*, subject to this act, to pay the cost of the works. Any surplus which may remain in any construction fund after providing for the payment of the cost of the works shall be added to and become a part of the appropriate sinking fund hereinafter provided for."

Section 129. Section 89-115, R.C.M. 1947, is amended to read as follows:

"89-115. **Water funds — rates — sale of water — appeals to board — lease and sale of water rights and property.** *(1) Subject to* this act *and section 89-103.2, the department may* fix and establish the prices, rates and charges at which the resources and facilities made available

under this act *may* be sold and disposed of; enter into contracts and agreements, and do *those* things which in its judgment are necessary, convenient or expedient for the accomplishment of the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it *prescribes*; *the department shall* enter into *the* contracts and fix and establish *the* prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds *or loans* as they severally become due and payable; this act *does not* authorize any change, alteration or revision of *those* rates, prices or charges as established by any contract entered into under this act except as provided by *the* contract.

(2) An incorporated water users' association that is sustaining and responsible for the operations of *a* works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

(3) A contract made by the *department* for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of *a* failure or default in the payment of moneys specified in *the* contract to be paid to the *department*, the *department* may, upon notice as *is* prescribed in *the* contract, terminate *the* contract and all obligations thereunder. The act of the *department* in ceasing on default to furnish or deliver water, use of water, water storage or other service under *the* contract *does* not deprive the *department* of, or limit any remedy provided by *the* contract or by law for the recovery of moneys due or which may become due under *the* contract.

(4)(a) A person aggrieved by a decision of the department to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within ten (10) days after receiving notice of termination of the contract from the department. The termination of the contract shall be stayed if an appeal is taken.

(b) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract, or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within thirty (30) days after the final decision of the department regarding the dispute.

(5) Subject to the approval of the board under section 89-103.2, the department may sell, transfer to *water* user associations, abandon or otherwise dispose of any rights of way, easements or property when it *determines* that *they are* no longer needed for the purposes of this act, or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the *department* as to the market value of rights of way, easements or property

to be sold, transferred, abandoned or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under this act, shall be deposited to the state general fund."

Section 130. Section 89-116.1, R.C.M. 1947, is amended to read as follows:

"89-116.1. **Disposition of moneys received from sale of water.** The outstanding water conservation revenue bonds issued for seventeen (17) major irrigation projects and purchased by the state shall be administered by the *department* for the benefit of the state general fund. All sums received from the sale of water through water purchase contracts or otherwise from *the* seventeen (17) irrigation projects, except those funds which are specifically collected for the operation and maintenance of *the* projects, and all other income or other benefits arising from, out of, or in connection with the ownership of *the* projects from whatever source derived shall be deposited in the state general fund, to be applied on the retirement of *the* bonds and any advances or other indebtedness made for the benefit of the seventeen (17) projects by the *department.*"

Section 131. Section 89-117, R.C.M. 1947, is amended to read as follows:

"89-117. **Contracts with the United States.** *The department may* enter into contracts and leases with the United States, its instrumentalities or agencies, for the purpose of financing the construction of any works authorized by this act, and may in *those* contracts or leases authorize the United States, its instrumentalities or agencies, to supervise and approve the construction, maintenance and operation of *the* works, or any project or portion thereof, until such times as any money expended, advanced or loaned by said United States, its instrumentalities or agencies, and agreed to be repaid thereto by *the department, is* fully repaid. It is the purpose and intent of this act that the *department may* accept *cooperation* from the United States, its instrumentalities and agencies, in the construction, maintenance and operation and in financing the construction, of any works authorized by this act, and the *department may* do all things necessary in order to avail itself of *that* aid, assistance and *cooperation* under federal legislation now or hereafter enacted by Congress."

Section 132. Section 89-118, R.C.M. 1947, is amended to read as follows:

"89-118. **Powers and duties of department — actions at law.** (1) The *department* shall keep full and complete accounts concerning all matters and things relating to the works and annually shall prepare balance sheets and income and profit and loss statements showing the financial condition of each project, and file copies thereof with the secretary of state. All books and papers pertaining to all matters provided for in this act shall at all reasonable times be open to the inspection of any party interested or any citizen of the state. Except as otherwise provided in this act, the *department has* full charge and control of the construction, oper-

ation and maintenance of the works and the collection of all rates, charges and revenues of whatsoever character therefrom. The *department* shall proceed immediately with the construction of the works upon funds being made available therefor and shall prosecute *the* works to completion as rapidly as possible. The *department, with the approval of the board, may* sell, lease and otherwise dispose of all waters which may be impounded under this act, and *the* water may be sold for the purpose of irrigation, development of power, watering of stock or any other purpose. To the extent that it may be necessary to carry out this act, and subject to a compliance with the other provisions of this act, the *department has* full control of all the water of the state not under the exclusive control of the United States and not vested in private ownership, and it shall take such steps as may be necessary to appropriate and conserve the same for the use of the people.

(2) The *department may* institute in any *court* any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in *any court* institute, maintain, and prosecute to final determination actions, suits and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for *the* reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water. *The department* may join owners of waters appropriated by *a* person, association or corporation from the streams of the state, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of *a* project constructed by *the department.* All costs and expenses of *the* actions, suits or special proceedings shall be paid by *the department* out of funds provided under this act."

Section 133. Section 89-119, R.C.M. 1947, is amended to read as follows:

"89-119. **Actions by trustee and bondholders.** Any holder of any bonds issued under this act or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by suit, action, mandamus or other proceeding, including proceedings for the appointment of a receiver, protect and enforce any and all rights granted hereunder or under *the* resolution or trust indenture and may enforce and compel performance of all duties required by this act or by *the* resolution or trust indenture to be performed by the board *or the department.* While any bonds issued by the board remain outstanding the powers, duties or existence of the board or any official or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of *the* bonds."

Section 134. Section 89-120, R.C.M. 1947, is amended to read as follows:

"89-120. **Limitation of liability — receipt of contributions and appropriations authorized.** *(1)* No liability or obligation shall be incurred under this act beyond the extent to which money *is* provided under this act. All public or private property damaged or destroyed in carrying out the powers granted under this act shall be restored or repaired and placed in their original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided by this act.

(2) The *department may* receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act."

Section 135. Section 89-124, R.C.M. 1947, is amended to read as follows:

"89-124. **Conformity to federal regulations authorized.** For the purpose of obtaining financial aid from the United States of America, the *department* may adjust the plans and operation of *a* project, created under this act, to conform to the laws and regulations of the federal government and the supervision of any *agency* constituted under *that* authority, and may exercise *those* powers whenever conferred."

Section 136. Section 89-125, R.C.M. 1947, is amended to read as follows:

"89-125. **Powers of department concerning waters and appropriations thereof.** *(1)* The authority of the *department* conferred by this act *extends and applies* to rights to the natural flow of the waters of this state which it may acquire, *with the approval of the board,* by condemnation, purchase, exchange, appropriation or agreement.

(2) For the purpose of regulating the diversion of *those* waters, the *department* may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The *department* may take into consideration the decrees of the courts of this state having jurisdiction, which purport to adjudicate the waters of *a* stream or its tributaries, and a fair, reasonable, equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The *department,* at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and make findings of the date and quantity of appropriation and use of all claimants which the *department* will recognize and observe in diverting the waters which it owns. The *department* may police and distribute to the owner of *the* recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The *department,* when engaged in controlling and dividing the natural flow of *a* stream under the authority granted by this act, *is* exercising a police power of the state, and water commissioners appointed by any court *may not* deprive the *department* of any of the waters owned or administered under agreement with respective owners, *but* the owner of *a* prior right contending that the *department* is not recognizing and respecting *the* appropriation may resort to a court for the purpose of determining whether or not the rights of *the* claimant have been invaded, and the *department* shall observe the terms of *the* final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of *a* stream, it may divert or authorize the diversion at any point on *the* stream, or any portion thereof, when *it is* done without injury to *a* prior appropriator.

(7) This act does not repeal or amend an existing *statute* pertaining to the appropriation or use of water except as expressly provided *in this act*, and *this act does not* interfere with vested rights to the use of water."

Section 137. Section 89-127, R.C.M. 1947, is amended to read as follows:

"89-127. **Sale or disposal of waters — disposal of waterworks systems, provision for.** In addition to the powers conferred upon the *department* to sell, lease, *or* otherwise dispose of waters for the purpose of irrigation, development of power, watering of stock, or other purposes, the *department, with the approval of the board, may* sell, lease, *or* otherwise dispose of waters from its waterworks systems for public, domestic, industrial and other uses and for fire protection. The *department may* sell or otherwise dispose of *a* waterworks system which is not operated for the purpose of irrigation or development of power, after the discharge of all of the bonds issued by the board to finance the construction or acquisition thereof and of all interest thereon and costs and expenses incurred in connection with any action or proceeding by or on behalf of the holders of *the* bonds; however, no such sale or other disposition *may* be made except to a municipality, political subdivision, authority or other public body of the state."

Section 138. Section 89-132.1, R.C.M. 1947, is amended to read as follows:

"89-132.1. **State water plan.** *The department shall*:

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing *this* inventory, the *department* may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to perform research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and *with the approval of the board,* adopt, and from time to time amend, extend or add to, a comprehensive, *coordinated* multiple-use water resources plan, known as the "state water plan." *The* state water plan may be formulated and adopted in sections, *these* sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the *department* shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of *the* hearing or hearings shall be published for two (2) consecutive

weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least thirty (30) days prior to *the* hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the *department has* formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. *The* ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and *the department* may assess and collect a reasonable charge for *these* publications.

(6) *The board may adopt rules* necessary to effect the purposes of this act."

Section 139. Section 89-140, R.C.M. 1947, is amended to read as follows:

"89-140. **State agencies and counties may contract with department.** *A state agency or the* boards of county commissioners having jurisdiction over any lands which may require the use of any water or water rights owned or controlled by the *department* or the United States or its agencies, *may* enter into such contracts as are necessary with the *department*, the United States, or agencies of the United States, or others, for the purchase of water or water rights needed for *those* lands, and may enter into any contracts as necessary or expedient, similar to contracts executed by individuals or others, to secure for the state, state institutions, counties and state school and county lands the benefits of *the* water or water rights, which obligations may be similar to those of persons who become stockholders in corporations or who may agree to purchase and pay for water for irrigation purposes. *These contracts* may include agreements that the state and counties shall be subject to the same charges and payments as are other water users within *the* projects; however, none of *those* charges, payments or costs shall constitute a lien against the state's interest in the lands."

Section 140. Section 89-310, R.C.M. 1947, is amended to read as follows:

"89-310. **Definitions.** *Unless the context requires otherwise, in this chapter:*

(1) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental

production and testing of models, devices, equipment, materials, and processes.

(3) "Department" means the department of natural resources and conservation provided *for* in Title 82A, chapter 15.

(4) "Board" means the board of natural resources and conservation provided for in section 82A-1509."

Section 141. Section 89-312.1, R.C.M. 1947, is amended to read as follows:

"89-312.1. **Standards for research in weather modification control.** The *board* may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property."

Section 142. Section 89-314, R.C.M. 1947, is amended to read as follows:

"89-314. **Department to review applications—exemptions.** The *department* shall review all applications for weather modification activities, and *the board* may provide by rule for exempting from the license and permit requirements of this act:

(1) research, development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 143. Section 89-317, R.C.M. 1947, is amended to read as follows:

"89-317. **License fee.** A license shall be issued or renewed only upon the payment to the *department* of one hundred dollars ($100) for the license or renewal."

Section 144. Section 89-318, R.C.M. 1947, is amended to read as follows:

"89-318. **Issuance of permits — requirements for permit — hearing.** (1) The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this *chapter*, only:

(a) if the applicant is licensed pursuant to this *chapter*;

(b) if sufficient notice of intention is published and proof of publication is filed as required in section 89-322;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 89-323;

(d) if the fee for the permit is paid as required in section 89-324;

(e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good.

(2) *The department shall hold a* public hearing in the area to be affected by the issuance of the permit, if the *board* determines that a hearing is necessary. The department may *in its discretion* assess the permit applicant for the costs incurred by the department in holding the hearing."

Section 145. Section 89-320, R.C.M. 1947, is amended to read as follows:

"89-320. **Notice of intention to apply for permit — activities limited by terms of permit.** *Before* undertaking any weather modification and control activities, the applicant for a permit shall file with the *department*, and also have published, a notice of intention. If a permit is issued, the holder of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred."

Section 146. Section 89-322, R.C.M. 1947, is amended to read as follows:

"89-322. **Publication of notice of intention.** (1) The applicant shall have notice of intention, or that portion thereof including the items specified in section *89-321*, published at least once a week for two (2) consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one (1) county or if the affected area is located in more than one (1) county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) Proof of publication, made in the manner provided by law, shall be filed by the applicant with the *department* sooner than the sixteenth day after the date of the last publication of the notice."

Section 147. Section 89-324, R.C.M. 1947, is amended to read as follows:

"89-324. **Permit fee — time of payment.** The fee to be paid by each applicant for a permit shall be equivalent to one per cent (1%) of the estimated cost of such operation, the estimated cost to be computed by the *department* from the evidence available to it. The fee is due and payable to the *department* as of the date of issuance of the permit *by the board*; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit."

Section 148. Section 89-325, R.C.M. 1947, is amended to read as follows:

"89-325. **Account in agency fund — fees used to pay expenses.** There is established an account in the agency fund to be known as the "weather modification account." All license and permit fees paid to the *department* shall be deposited in this account and used to pay the expenses of administering this act."

Section 149. Section 89-326, R.C.M. 1947, is amended to read as follows:

"89-326. **Records of operations maintained by licensees.** Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

(1) *The* method employed;

(2) *Type* of equipment used;

(3) *Kinds* and amounts of material used;

(4) *Times* and places of operation of the equipment;

(5) *Names* and addresses of all individuals participating or assisting in the operation;

(6) *Any* other general information as the *department* may require."

Section 150. Section 89-327, R.C.M. 1947, is amended to read as follows:

"89-327. **Reports of operations.** The *department* shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The *department* shall also require reports from any organization that is exempt from license and permit requirements as provided in section *89-314.*"

Section 151. Section 89-328, R.C.M. 1947, is amended to read as follows:

"89-328. **Records and reports open to public.** The records and reports in the custody of the *department* shall be open for public examination."

Section 152. Section 89-330, R.C.M. 1947, is amended to read as follows:

"89-330. **State and agents not liable for acts of private persons.** Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, *the department* or any state officials or employees for any weather modification and control activities of any private person or group."

Section 153. Section 89-401, R.C.M. 1947, is amended to read as follows:

"89-401. **Disposition of moneys collected.** For the purpose of carrying out the provisions of the Water Conservation Act, acts amendatory thereto and supplementary thereof, and such other *water resource* authority, powers and duties as are conferred upon the *department of natural resources and conservation* by law, the following moneys shall be deposited in the earmarked revenue fund for the use of the *department*: all sums of money donated or contributed by the federal government or any department or agencies thereof; all gifts, donations, bequests and devises made to the state therefor; and proceeds of the sale thereof; the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired by the moneys thereof; all reimbursements for money advanced for the payment of the assessments upon state, school granted and other public lands for the improvement thereof as provided by law; all reimbursements for money advanced for the investigation and survey of reclamation, electrification and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and dyking, drainage, and dyking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance and operation of plants or projects for the manufacture or distribution of electric current; revenues arising from projects constructed or owned by the *department* in excess of costs of operation and maintenance, and repayment of principal and interest of any moneys borrowed for the construction of *the* projects; all sums payable as rentals due for water use, maintenance or operation upon any project owned by the state or for which such rentals are due and payable under any contract or agreement made by any person, association or corporation with the *department*; all sums of money received by the *department* for the use of electric current, in excess of the maintenance and operation upon any electrification system or project; all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities or towns or their proportion of the cost thereof, or from any other sources."

Section 154. Section 89-402, R.C.M. 1947, is amended to read as follows:

"89-402. **Payment of expenses.** From the moneys of the *department* in the earmarked revenue fund there shall be paid, upon vouchers approved by *it*, such sums as are found to be necessary or expedient for the investigation and survey of unreclaimed and undeveloped lands, to determine the relative agricultural value, productiveness, uses and feasibility and cost of the reclamation and development thereof; for the investigation and survey of electrification and rehabilitation systems and projects proposed to be financed in whole or in part by the *department*; such amounts as may be authorized by the *department* for the reclamation of lands by dyking, drainage, dyking and drainage and irrigation districts duly and regularly organized under the laws of this state and such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands; such amounts as may be authorized by the *department* for the construction, maintenance and operation of dams and dykes for the conservation of water for reclamation projects or stock reservoirs, and purchase of rights of way and other costs preliminary to construction of reclamation, stock reservoirs, electrification or rehabilitation systems or projects authorized under the Water Conservation Act or acts amendatory thereof or supplemental thereto, provided that whenever deemed practical the *department* may employ county surveyors in the assistance and preparation of surveys and investigations conducted by the *department.*"

Section 155. Section 89-806, R.C.M. 1947, is amended to read as follows:

"89-806. **Diversion of natural flow of waters, when permitted.** Any person, persons, association or corporation, owning or in possession of lands susceptible of irrigation from any stream, the waters of which are so diminished by prior appropriations that a sufficient amount of water for the irrigation of their lands cannot be obtained from the natural flow of the stream, who shall construct a reservoir, or shall purchase or lease water from a reservoir owned by the *department of natural resources and conservation*, or another, or shall otherwise acquire an interest in such reservoir, or in water stored therein, which is so located that because of natural or other obstacles the water impounded therein cannot be conducted to the lands which they desire to irrigate, may, provided the stored water can be discharged into the stream in such a manner that it can be used beneficially by prior appropriators, divert the natural flow of the stream for the irrigation of their lands in lieu of an equal amount of stored water, provided, however, that such exchange can be made without injury to said prior appropriators."

Section 156. Section 89-906, R.C.M. 1947, is amended to read as follows:

"89-906. **Definitions.** *Unless the context requires otherwise, in this act:*

(a) The term "person" *means* any person, corporation, partnership, association, municipal corporation, agency and all others authorized by the laws of the state to appropriate water for beneficial uses.

(b) The term "interstate tributaries" or "interstate tributary" *means* the following described rivers which contribute to the flow of the Yellowstone river in the state of Montana, including all tributaries thereof: the Clark Fork of the Yellowstone river; the Big Horn river (except the Little Big Horn river); the Tongue river; and the Powder river, whose confluences with the Yellowstone river are respectively at or near the city (or town) of Laurel, Big Horn, Miles City, and Terry, all in the state of Montana.

(c) The term "domestic use" *means* the use of water by an individual, or by a family unit or household for drinking, cooking, laundering, sanitation and other personal comforts and necessities; and for the irrigation of a family garden or orchard not exceeding one-half acre in area.

(d) The term "stock water use" *means* the use of water for livestock and poultry.

(e) The term "divert" and "diversion" *means* the taking or removing of water from any interstate tributary or any tributary thereof, when the water so taken or removed is not returned directly into the channel of the interstate tributary or of the tributary thereof from which it is taken.

(f) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15."

Section 157. Section 89-907, R.C.M. 1947, is amended to read as follows:

"89-907. **Filing written statement with department.** *(1)* Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the *department* at its office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.

(2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true."

Section 158. Section 89-908, R.C.M. 1947, is amended to read as follows:

"89-908. **Duty to install weir or other measuring device.** Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the *department*, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order."

Section 159. Section 89-909, R.C.M. 1947, is amended to read as follows:

"89-909. **Duty to measure water.** *Each* claimant *shall* measure all

the water being diverted by him and keep accurate records thereof on forms prescribed and furnished by the *department*, and within fifteen *(15)* days after the first day of November of each year file *the* written records with the *department* at its office in Helena, Montana."

Section 160. Section 89-912, R.C.M. 1947, is amended to read as follows:

"89-912. **Board of natural resources and conservation to make rules and regulations.** The board *of natural resources and conservation* shall *adopt* and *the department shall* enforce reasonable rules consistent with this act and the Yellowstone River Compact."

Section 161. Section 89-914, R.C.M. 1947, is amended to read as follows:

"89-914. **Department to make record available.** The *department* shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from *those* interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission."

Section 162. Section 89-915, R.C.M. 1947, is amended to read as follows:

"89-915. **County attorneys to perform certain services.** The county attorneys of the state shall perform such legal services and bring such proceedings in carrying out the purposes of this act within their respective counties as the *department* shall require."

Section 163. Section 89-916, R.C.M. 1947, is amended to read as follows:

"89-916. **Penalty.** Any person who violates or refuses or neglects to comply with any provision of this act, or any order *or* rule *adopted* by the *board or department* pursuant thereto or the Yellowstone River Compact, *is* guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars *($25)* nor more than two hundred dollars *($200)* for each offense."

Section 164. Section 89-1201, R.C.M. 1947, is amended to read as follows:

"89-1201. **Creation of irrigation districts — percentage of titleholders required — what constitutes evidence of title — report of department of natural resources and conservation — payment of expenses.** (1) Sixty per centum in number of the holders of title or evidence of title to lands sought to be included in an irrigation district and which are susceptible of irrigation, such holders of title or evidence of title also representing sixty per centum of the acreage of said lands, may propose the establishment and organization of an irrigation district under the provisions of this act; provided, however, that when any of such land sought to be included in such irrigation district is covered by mortgage or other lien then the owner or owners of such land shall first procure the written consent of the holder of such mortgage or other lien before proposing the establishment and organization of such irrigation district. Irrigation districts may be formed in order to *cooperate* with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. When so organized, such district shall have the powers conferred or that may hereafter be conferred, by law upon such irrigation district, provided, however, that *in* all irrigation districts organized in connection with United States reclamation projects a majority of the holders of title or evidence of title to lands sought to be included in such irrigation district under the provisions of the act, may propose the establishment and organization of such district.

(2) The certificate of the county clerk and recorder, or the certificate of the *department of state lands*, shall be sufficient evidence of title for the purpose of this act. Where lands have been purchased from the state and part or all of the purchase money has been paid, but the patents or deeds from the state to such lands have not been issued, the receipt or receipts held by the purchasers, or the certificate of the *department of state lands* showing the payments on account of purchase, shall be evidence of title to such lands under this act.

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the *department of natural resources and conservation* on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the *department* at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the *department* in the investigation and report upon the proposed district shall be certified, with the report, and that *the department* shall, within a period of one hundred twenty days from the filing of said petition with the *department*, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to *cooperate* with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws."

Section 165. Section 89-1215, R.C.M. 1947, is amended to read as follows:

"89-1215. **Records required to be kept — examination by state examiner.** It shall be the duty of the board of control to keep, or cause to be kept, a full and complete book and record of the accounts, records, contracts, securities, minutes of meetings and other matters of every kind pertaining to or belonging to the joint operation of the irrigation districts, in the form prescribed by the *department of intergovernmental relations.*

It is hereby made the duty of the *department of intergovernmental relations* to prescribe such forms for the use of the board of control, and to examine the same as provided by law for the examination of the affairs of county offices."

Section 166. Section 89-1905, R.C.M. 1947, is amended to read as follows:

"89-1905. **Conveyance of property of irrigation districts to department of natural resources and conservation.** *In* addition to all other powers heretofore granted any irrigation district, existing under the laws of Montana, for the purpose of securing financial aid in any form from the *department of natural resources and conservation, an irrigation district may* convey, assign, transfer and set over to the *department* all or any part of its property, including all water rights, rights of way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and head gates, as may be required by the *department* as a condition to furnishing such financial aid or assistance."

Section 167. Section 89-2911, R.C.M. 1947, is amended to read as follows:

"89-2911. **Definitions.** Unless the context requires otherwise, in this chapter:

(a) "Ground water" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The *department,* after notice and hearing, may fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(f) *"Department"* means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to inclose a single and distinct body of ground water, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water areas may be divided into convenient administrative units "known as subareas."

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

Section 168. Section 89-2914, R.C.M. 1947, is amended to read as follows:

"89-2914. **Designation or modification of controlled ground water areas — notice of hearings.** Designation or modification of an area of controlled ground water use may be proposed to the board by the *department* on *its* own motion or by petition signed by at least twenty (20) or one-fourth (¼) (whichever is the lesser number) of the users of ground water in a ground water area wherein there is alleged to be factual data showing: (1) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within such ground water area; (2) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area; or (3) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area.

When such a proposal is thus made, the *department* shall fix a time and place for a hearing, which time shall not be less than thirty (30) days from the making of the proposal. The *department,* or the petitioners (as the case may be) shall publish a notice of the hearing setting forth therein

(1) the names of the petitioners;

(2) the description by legal subdivisions of all lands included in the ground water area or subarea;

(3) the purpose of the hearings and

(4) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal and be fully heard. Such notice of hearing shall be published at least once in each week for three successive weeks before the date of the hearing in a newspaper of general circulation in the county or counties in which the said ground water area or subarea is located. The *department* or the petitioners (as the case may be) shall also cause a copy of the notice together with a copy of the petition to be served by mail, not less than twenty (20) days before the hearing on all persons, other than the petitioners, who have theretofore filed a declaration of a

claim or notice of appropriation to withdraw ground water from the particular ground water area or subarea involved in the proceedings. A copy of the notice together with a copy of the proposal shall be mailed to each person at his last known address and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice, as prescribed herein, when completed shall be deemed to be sufficient notice of such hearing to all interested persons."

Section 169. Section 89-2915, R.C.M. 1947, is amended to read as follows:

"89-2915. **Limiting withdrawals — hearing and order.** (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the *department* has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the *department* that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The *department may* enforce the order; require persons to cease such excessive withdrawals in reverse order of their priority of rights; and bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the *department* in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board *may* after notice and hearing as heretofore provided in this section, modify or revoke its order upon a showing by any interested party and a finding by the board that conditions have materially changed since the prior order. While a matter is pending before the board, the *department may* restrict further development of the subarea."

Section 170. Section 89-2916, R.C.M. 1947, is amended to read as follows:

"89-2916. **Administrative finding of priorities.** *(1)* Any person

claiming a right to withdraw ground water (whether or not from a controlled area) or the *department* at *its* discretion, may initiate a hearing by the *department* for the ascertainment of all existing rights to the use of the ground water in the ground area or subarea involved. The *department* shall produce at the hearing a map showing and describing all the lands included in the ground water area or subarea, and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods, shall not modify or cancel the relative priorities of the rights.

(2) Within any designated or modified controlled ground water area or subarea wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the *board of* oil and gas conservation. Hearings pertaining to the production, use, or disposal of water from *those* wells shall be held by *that board* in accordance with the procedures established by that *board.* The *department* may petition the *board of* oil and gas conservation for hearings in regard to *those* operations and *it* shall be notified by the *board of* oil and gas conservation of *those* hearings instigated by other parties, when *those* hearings involve operations within a controlled ground water area or subarea.

(3) Hereafter, in *a* hearing for the ascertainment and finding of priorities, involving rights to the use of ground waters, all appropriators of ground water or of surface water in the particular controlled area, or subarea shall be included as parties and notified in the manner provided in section 89-2914."

Section 171. Section 89-2917, R.C.M. 1947, is amended to read as follows:

"89-2917. **Scope of administrative hearing.** (1) In *a* hearing for the ascertainment and finding of priorities to the use of ground water, the *department* in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, *is* entitled in *the* particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water *may* not be drawn by appropriators. The *department* shall act in administering and enforcing the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the *department* shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915."

Section 172. Section 89-2918, R.C.M. 1947, is amended to read as follows:

"89-2918. **Permit required to appropriate in controlled area.** A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the *department* in accordance with the Montana Water Use Act. The *department may* not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments)."

Section 173. Section 89-2926, R.C.M. 1947, is amended to read as follows:

"89-2926. **Waste and contamination of ground water prohibited — exception — duties of department.** No ground waters shall be wasted without beneficial use. The *department* shall require all wells producing waters which contaminate other waters to be plugged or capped. *It* shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination or pollution of ground waters through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided however, in the following cases the withdrawal or use of ground water shall not be construed as waste under this act:

(1) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground waters;

(2) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(3) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same, or that removed from a mine to permit mining operations or to preserve the mine in good condition;

(4) the disposal of ground water used in connection with production, for reduction, smelting and milling metallic ores and industrial minerals, or that displaced from an aquifer by the storage of other mineral resources.

The *department* at any time may hold a hearing on *its* own motion, or upon petition signed by a representative body of users of ground water in any area or subarea, to determine whether the water supply within such area or subarea is used in compliance with this act."

Section 174. Section 89-2927, R.C.M. 1947, is amended to read as follows:

"89-2927. **Inspection — entry on premises.** The *department*, the state bureau of mines and geology, or the *department of health and environmental sciences, may enter* on the property of any appropriator, where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this act."

Section 175. Section 89-2928.1, R.C.M. 1947, is amended to read as follows:

"89-2928.1. **Well logs.** Within sixty (60) days after any well is completed, the driller shall file with the *department* a well log report on a form provided by the *department* at its offices and at the offices of the county clerks and recorders. The *department* may return the report for refiling if it is incomplete or incorrect. The *department* shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology."

Section 176. Section 89-2930, R.C.M. 1947, is amended to read as follows:

"89-2930. **Duty of county attorneys and attorney general.** The county attorneys and the attorney general of the state shall perform such legal services and bring such legal proceedings in carrying out the purpose of this act within their respective counties as the *department* shall request."

Section 177. Section 89-2931, R.C.M. 1947, is amended to read as follows:

"89-2931. **Rules.** The *board* may prescribe and *the department shall* enforce reasonable rules concerning and providing for inspection and entry for that purpose by the *department*; the circumstances under which the construction of weirs or other measuring devices may be required; and such other similar matters as are required by, and consistent with the administration of this act."

Section 178. Section 89-2932, R.C.M. 1947, is amended to read as follows:

"89-2932. **Ground water supervisors — duties.** The *department* may appoint one or more ground water supervisors for each designated controlled area, and may appoint one or more ground water supervisors at large. Within their respective jurisdictions and under the direction of the *department*, the ground water supervisors and supervisors at large shall supervise the withdrawal of ground water and the carrying out of orders issued by the *department.*"

Section 179. Section 89-2933, R.C.M. 1947, is amended to read as follows:

"89-2933. **Investigations.** *(1) The department shall* compile information for the purpose of enabling *it* to comply with this act. In compiling *this* information, the *department shall* make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the *board of* oil and gas conservation, the *department of health and environmental sciences*, and any other private, state, or governmental agency.

(2) In addition to the foregoing, the *department* may request specific investigations by the preceding public agencies where desired information is not otherwise available."

Section 180. Section 89-2934, R.C.M. 1947, is amended to read as follows:

"89-2934. **Power to administer oaths and subpoena witnesses.** The *department may* administer oaths and issue subpoenas for the attendance of witnesses, in any investigation, hearing or proceeding held by *it.*"

Section 181. Section 89-2934.1, R.C.M. 1947, is amended to read as follows:

"89-2934.1. **Hearings before board — Administrative Procedure Act.** (1) A person who is aggrieved by a final decision of the *department* under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act [82-4201 to 82-4225] governs administrative proceedings under this chapter."

Section 182. Section 89-2936, R.C.M. 1947, is amended to read as follows:

"89-2936. **Penalties.** Any person who violates or refuses or neglects to comply with any provision of this act, or of any order, rule or regulation promulgated by the *department or the board,* or who commits waste, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars *($25)* nor more than two hundred and fifty dollars *($250)* for each offense."

Section 183. Section 89-3403, R.C.M. 1947, is amended to read as follows:

"89-3403. **Definitions.** As used in this act unless the context clearly indicates otherwise:

(1) "District" means a conservancy district, which is a public corporation and a political subdivision of the state.

(2) "Directors" means the board of directors of a conservancy district.

(3) "Elector" means a person qualified to vote under section *89-3423.*

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Person" means a natural person; firm; partnership; co-operative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.

(6) *"Department"* means *the department of natural resources and conservation provided for in Title 82A, chapter 15.*

(7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

(9) "Cost of works" means the cost of construction, acquisition, improvement, extension and *development* of works, *including* financing charges, interest and professional services.

(10) "Applicants" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or if no newspaper is published in a county, a newspaper of general circulation in the county, or counties, in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.

(12) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.

(13) "Taxable valuation" shall mean the valuation determined according to section 84-302, R.C.M., 1947, and does not mean assessed valuation."

Section 184. Section 89-3405, R.C.M. 1947, is amended to read as follows:

"89-3405. **Action by water board upon receipt of request.** (1) Sooner than eleven (11) days after the request is received, the *department* shall acknowledge the request.

(2) The *department* shall itself, or through *cooperating* agencies, or together with *cooperating* agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability and compatability with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;

(g) sooner than one (1) year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, fish

and game commission, *department* of health *and environmental sciences*, and other affected state and federal resource agencies for their comments."

Section 185. Section 89-3406, R.C.M. 1947, is amended to read as follows:

"89-3406. **Hearing by department.** (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the *department* to hold a hearing. The *department* shall hold the hearing sooner than sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with *section 89-3403 (11).*

(2) If the *department* itself initiated the preliminary survey, it may hold a hearing without being requested to do so."

Section 186. Section 89-3407, R.C.M. 1947, is amended to read as follows:

"89-3407. **Feasibility study and report — adjustment of proposed boundaries.** After the hearing, the applicants, or any one of them, may request the *department* to prepare a detailed feasibility study of the proposed district. If the *department* concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report, and sooner than one (1) year after receipt of the request, send copies to the applicants, if any, the fish and game commission, *department* of health *and environmental sciences*, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the *department* may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The *department* may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district."

Section 187. Section 89-3408, R.C.M. 1947, is amended to read as follows:

"89-3408. **Procedure for organization of district.** If in the opinion of the *department* the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the *department* shall file a petition requesting organization with the court;

(2) the petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars ($100,000) or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least fifty-one percent (51%) of the land outside the limits of an incorporated municipality, and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality."

Section 188. Section 89-3410, R.C.M. 1947, is amended to read as follows:

"89-3410. **Filing of documents after organization.** Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, *the department*, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law."

Section 189. Section 89-3415, R.C.M. 1947, is amended to read as follows:

"89-3415. **Participation in federal programs.** A district organized under this act, by itself or in conjunction with others, as a sponsoring organization *may* participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts."

Section 190. Section 89-3421, R.C.M. 1947, is amended to read as follows:

"89-3421. **Annual written report of directors' activities.** Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the *department.* Reports shall be in the form, and contain the information, prescribed by the *department.*"

Section 191. Section 89-3422, R.C.M. 1947, is amended to read as follows:

"89-3422. **State examiner to examine financial records — report — fee.** At least once each year the *department of intergovernmental relations* shall examine the financial records of each district and file a report of the examination with the *department of natural resources and conservation* and court. The *department of intergovernmental relations* shall collect a fee for the examination equal to that charged irrigation districts."

Section 192. Section 89-3438, R.C.M. 1947, is amended to read as follows:

"89-3438. **Petition for merger of districts — hearing and notice — merger into new district — inclusion in another district — majority of electors may kill merger by petition — existing obligations.** (1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be served by the merging of the districts, and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the *department.*

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section *89-3403* as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one (1) district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations."

Section 193. Section 89-3449, R.C.M. 1947, is amended to read as follows:

"89-3449. **Other agencies not affected.** The provisions of this act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the *department*, conservation *commission*, conservation districts, *department* of health *and environmental sciences*, or the fish and game commission; but shall be held to be supplementary thereto and in aid thereof."

Section 194. Section 89-3502, R.C.M. 1947, is amended to read as follows:

"89-3502. **Policy and purposes.** *(1)* The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to provide state *coordination* and technical assistance to local units in management of floodway areas; to *coordinate* federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations; and to provide the *department of natural resources and conservation* with authority necessary to carry out a comprehensive floodway management program for the state.

(2) Specifically, it is the purpose of this act to:

(a) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

(b) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(c) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard."

Section 195. Section 89-3503, R.C.M. 1947, is amended to read as follows:

"89-3503. **Definitions.** As used in this *chapter*, unless the context otherwise requires:

(1) "A flood of one hundred year (100) frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one per cent (1%) chance of occurring in any given year;

(2) "Artificial obstruction" *means* any obstruction which is not a natural obstruction;

(3) "Channel" *means* the geographical area within either the natural or artificial banks of a watercourse or drainway;

(4) "Board" *means the board of natural resources and conservation provided for in section 82A-1509;*

(5) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(6) "Designated floodway" *means* a floodway whose limits have been designated and established by order of the board;

(7) "Drainway" *means* any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" *means* the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" *means* the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodway-encroachment lines" *mean* the lines limiting a designated floodway;

(11) "Floodplain" *means* the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;

(12) "Establish" *means* construct, place, insert, or excavate;

(13) "Natural obstruction" *means* any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;

(14) "Obstruction" *means* any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by *the* water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(15) "Owner" *means* any person who has dominion over, control of, or title to an obstruction;

(16) "Political subdivision" *means* any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(17) "Watercourse" *means* any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse."

Section 196. Section 89-3504, R.C.M. 1947, is amended to read as follows:

"89-3504. **Program for delineation of floodways — floodway-encroachment lines — land-use regulations.** (1) The *department* shall initiate a comprehensive program for the delineation of designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and *may* enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired *by the department* to reasonably locate the floodway of a flood of one hundred (100) years frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for *the* floodway within which a political subdivision may establish land-use regulation. The *department* shall furnish *this* data to officials of the political subdivision having jurisdiction over *those* areas together with a map outlining the areas involved, a copy of this act, adopted rules of the board, and suggested minimum standards *adopted by the board.* These standards *and* rules shall reflect gradations in flood hazard based on flood frequency and other criteria as outlined in *section 89-3507(2).* The location of the encroachment lines shall be the estimated outer boundary of the floodway of one hundred (100) year frequency flood, as determined from the available data. The *department* shall record all floodway-encroachment lines established by *the board* in the office of the county clerk and recorder of each county in which *those* lines are found. The board *may* alter *the* lines at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of *a* hearing or order of the board establishing or altering *the* line shall be given by publishing *the* notice once each week for three *(3)* consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of *the* order.

(3) If within one (1) year from the date of transmittal of the floodplain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a one hundred (100) year flood as established by the board under subsection (2) of this section, unless specifically authorized by the board."

Section 197. Section 89-3505, R.C.M. 1947, is amended to read as follows:

"89-3505. **Artificial obstructions and nonconforming uses as nuisances.** *An* artificial obstruction or nonconforming use in *a* designated floodway enforced under section 89-3504(3) and not exempt under section

89-3506 is a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board."

Section 198. Section 89-3506, R.C.M. 1947, is amended to read as follows:

"89-3506. **Establishment of artificial obstructions or nonconforming uses unlawful — permitted open space uses — prohibited nonconforming uses.** (1) It *is* unlawful for a person to establish *an* artificial obstruction or nonconforming use within a designated floodway, or for *an* owner to permit *an* artificial obstruction to remain within a designated floodway without a permit from the board. This act *does* not affect any existing artificial obstruction or nonconforming use established in the floodway *before the land-use regulations adopted by the political subdivision are effective or* before the board has enforced a designated floodway under section 89-3504(3); *however, a* person *may not* make nor *may an* owner allow alterations of *an* artificial obstruction within a designated floodway whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction *is* not an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment: (a) agricultural uses; (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips; (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails; (d) forestry, including processing of forest products with portable equipment; (e) residential uses such as lawns, gardens, parking areas and play areas; (f) excavations subject to the issuance of a permit under section *89-3507*.

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) *A* building for living purposes or place of assembly or permanent use by human beings; (b) *a* structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; (c) the construction or permanent storage of *an* object subject to flotation or movement during flood level periods."

Section 199. Section 89-3507, R.C.M. 1947, is amended to read as follows:

"89-3507. **Permits for obstructions — application — factors considered — fees.** (1) The board *may* issue permits for the establishment or alteration of obstructions which would otherwise violate section *89-3506*. The application for the permit shall *be submitted to the department and* contain such information as the *department requires*, including complete maps, plans, profiles and specifications of the obstruction and watercourse or drainway.

(2) In passing upon *the* application, the board shall consider: (a) the danger to life and property by water which may be backed up or diverted by *the* obstruction; (b) the danger that the obstruction will be swept downstream to the injury of others; (c) the availability of alternate locations; (d) the construction or alteration of the obstruction in such a manner as to lessen the danger; (e) the permanence of the obstruction; (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction; and, (g) such other factors as are in harmony with the purpose of this act. The board may make a part of *the* permit any reasonable conditions it may *consider* advisable. In order for the permit to continue to remain in force, the obstruction must be maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions to be established in the floodway of watercourses must be specifically approved or denied within a reasonable time by the board; permits for obstructions in the floodways or drainways shall be conclusively deemed to have been granted sixty (60) days after the receipt of *the* application by the *department*, or after such time as the board by rule *specifies*, unless the board notifies the applicant that the permit is denied.

(4) *An* application for a permit shall be accompanied by a nonrefundable application fee of ten dollars ($10) which the state treasurer shall credit to the floodway obstruction removal fund."

Section 200. Section 89-3508, R.C.M. 1947, is amended to read as follows:

"89-3508. **Powers and duties of department relative to obstructions.** (1) Where an obstruction to a floodway established under section 89-3504(2) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the *department* may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the *department;* and

(2) Where, after investigation, notice, and hearing, an order has been issued *by the board* to the owner of an obstruction not exempt under section *89-3506* for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the *department* may make or cause *the* removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law."

Section 201. Section 89-3509, R.C.M. 1947, is amended to read as follows:

"89-3509. **Authority to enter and investigate lands or waters.** The *department* may make reasonable entry upon lands and waters in the state for the purpose of making *an* investigation, survey, removal, or repair contemplated by this act. An investigation of *a* natural or artificial obstruction shall be made by the *department* either on its own initiative, on the written request of three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of *a* political subdivision."

Section 202. Section 89-3511, R.C.M. 1947, is amended to read as follows:

"89-3511. **Orders and rules — judicial remedy.** The board may *adopt* such orders and rules as are necessary to implement this act. If an order is issued to the owner of an artificial obstruction not exempt under *section 89-3506* for its removal or repair, *the* order shall not become effective less than *ten* (10) days after a hearing is held relating to *the* order. In addition to any requirement imposed by *section 89-3504 (2)*, where *an* order is issued which affects with particularity the land adjacent to *a* watercourse or drainway, notice of the contents of *the* order and of any required hearing shall be mailed by the *department* to the titleholder of *the* land not less than ten (10) days before the effective date of *the* order, or, if there is a required hearing, to the titleholder of *the* land and to the owner of the obstruction not less than ten (10) days before the date of *the* hearing; *however, the* notice need not be given to the owner of the obstruction for an order issued pursuant to *section 89-3508 (2)* if the owner cannot be found or determined. All orders and rules *adopted* by the board shall be on file at the offices of the *department* and in the office of the county clerk of each county affected by *the* order or rule. *A* person aggrieved by any order of the board issued under this act may appeal from *the* order to a court of competent jurisdiction within thirty (30) days after its effective date. *If* an appeal is taken, enforcement of *the* order shall be stayed pending the outcome of *the* appeal. Service of notice of the appeal shall be made upon the *department.*"

Section 203. Section 89-3512, R.C.M. 1947, is amended to read as follows:

"89-3512. **Floodway obstruction removal fund.** The state treasurer *shall* establish the floodway obstruction removal fund and credit to *the* fund for the removal of obstructions as provided in *section 89-3508 (1)*, such money specifically appropriated by the legislature. The *department* may allocate money from the floodway obstruction removal fund for purposes provided in *section 89-3508 (1).*"

Section 204. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"89-3514. **Permit construed as added requirement — exception — immunity.** (1) The granting of a permit under this act *does not* affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but *is* an added requirement; *however,* if a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's *minimum standards are* advisory only. The grant or denial of a permit *does* not have *an* effect on *a* remedy of *a* person at law or in equity; *however,* where it is shown that there is a wrongful failure to comply with this act, there *is* a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of *a* person bringing suit.

(2) *A* permit for the construction of *a* structure to be established within a designated floodway *may not* be granted by *a* political subdivision unless the applicant has first obtained the permit required by this act, or until the board acknowledges that *the* structure would not be an obstruction within the meaning of this act.

(3) *An* action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act *may not* be brought against the state, the board, a member of the board, or *the department. This* act *does not interfere* with the right of the United States to regulate interstate commerce or the navigable waters of the United States."

Section 205. Section 89-3515, R.C.M. 1947, is amended to read as follows:

"89-3515. **Remedies not exclusive.** The use of any one of the remedies or powers given to the board *or the department* in this act *is* not a bar to the exercise of any other remedy or power given by this act."

Section 206. Section 93-9908, R.C.M. 1947, is amended to read as follows:

"93-9908. **The complaint and its contents.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners, mortgagees and lien holders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of plaintiff.

4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement, or town, or a county, the county commissioners of the county may be named as plaintiff.

6. If a sand, stratum or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained, and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground

storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the *board of* oil and gas conservation as set forth in section *60-804.*"

Section 207. Section 93-9911, R.C.M. 1947, is amended to read as follows:

"93-9911. **Power of court — preliminary condemnation order.** The court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in subdivision 5, section 93-9904, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

2. To determine whether or not the use for which the property is sought to be appropriated is a public use, within the meaning of the laws of this state;

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary;

4. If the court or judge is satisfied, from the evidence presented at the hearing provided for in section 93-9909, that the public interests require the taking of such lands, and that the facts necessary to be found before condemnation appear, it or he must forthwith make and enter a preliminary condemnation order that the condemnation of the land or other real property may proceed in accordance with the provisions of this chapter.

5. If the property sought to be appropriated is a sand, stratum or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court or judge shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir, and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the said underground gas storage reservoir, and for the use in connection with the creation, operation and maintenance thereof, and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property; provided, however, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas.

The court shall appoint three (3) persons, qualified as experts and recommended as such by the *board of* oil and gas conservation, to assist

and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

Section 208. Sections 28-101, 28-102, 28-107, 28-126, 28-132, 28-409, 46-2303 through 46-2306, 46-2319, 46-2328, 60-125, 60-137, 60-138, 60-146, 60-147, 81-1401.1, 81-1401.2, 81-1403, 81-1505, 82-3001 through 82-3003, 82A-1502 through 82A-1506, 82A-1507.1, 82A-1510, 82A-1511, 82A-1512, 89-103, 89-103.1, 89-103.3, 89-103.4, 89-103.5, 89-103.6, 89-103.8, 89-107, 89-108, 89-126, 89-129 through 89-139, 89-311, 89-827, and 89-828 are repealed.

Approved March 21, 1974

CHAPTER NO. 254

AN ACT TO ACKNOWLEDGE THE EXISTENCE OF NATURAL AND POTENTIALLY NATURAL AREAS IN THE STATE AND TO PROVIDE FOR THE PROTECTION OF THESE AREAS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 81-2701, R.C.M. 1947, which reads as follows:

81-2701. **Title.** This act shall be known and may be cited as the "Montana Natural Areas Act of 1974."

Section 2. There is a new section to be numbered 81-2702, R.C.M. 1947, which reads as follows:

81-2702. **Legislative intent.** The legislative assembly finds that in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geological values, or areas possessing these characteristics to a degree promising their restoration to a natural state; that since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, the remaining areas should be preserved for the benefit of this and future generations; and that currently there are no regulations promulgated by the state or local governments to insure adequate protection for natural areas. It is the intention of the legislative assembly to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity.

In this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preser-